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BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF NORTH CAROLINA

VOLUME 32
1952-54

HARRY McMULLAN
ATTORNEY GENERAL

T. W. BRUTON
RALPH MOODY
CLAUDE L. LOVE
I. BEVERLY LAKE
HARRY W. MCGALLIARD
JOHN HILL PAYLOR
Assistant Attorneys General

LETTER OF TRANSMITTAL

1 December 1954

To his Excellency,
W. B. UMSTEAD, *Governor*
Raleigh, North Carolina

Dear Sir:

In compliance with statutes relating thereto, I herewith transmit the report of the Department of Justice for the biennium 1952-1954.

Respectfully yours,

HARRY McMULLAN,
Attorney General

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1952/54

LIST OF ATTORNEYS GENERAL SINCE THE ADOPTION OF CONSTITUTION IN 1776

	<i>Term of Office</i>
Avery, Waightsill	1776-1779
Iredell, James	1779-1782
Moore, Alfred	1782-1790
Haywood, J. John	1791-1794
Baker, Blake	1794-1803
Seawell, Henry	1803-1808
Fitts, Oliver	1808-1810
Miller, William	1810-1810
Burton, Hutchins G.	1810-1816
Drew, William	1816-1825
Taylor, James F.	1825-1828
Jones, Robert H.	1828-1828
Saunders, Romulus M.	1828-1834
Daniel, John R. J.	1834-1840
McQueen, Hugh	1840-1842
Whitaker, Spier	1842-1846
Stanly, Edward	1846-1848
Moore, Bartholomew F.	1848-1851
Eaton, William	1851-1852
Ransom, Matt W.	1852-1855
Batchelor, Joseph B.	1855-1856
Bailey, William H.	1856-1856
Jenkins, William A.	1856-1862
Rogers, Sion H.	1862-1868
Coleman, William M.	1868-1869
Olds, Lewis P.	1869-1870
Shipp, William M.	1870-1872
Hargrove, Tazewell L.	1872-1876
Kenan, Thomas S.	1876-1884
Davidson, Theodore F.	1884-1892
Osborne, Frank I.	1892-1896
Walser, Zeb V.	1896-1900
Douglas, Robert D.	1900-1901
Gilmer, Robert D.	1901-1908
Bickett, T. W.	1909-1916
Manning, James S.	1917-1925
Brummitt, Dennis G.	1925-1935
Seawell, A. A. F.	1935-1938
McMullan, Harry	1938-

LIST OF ATTORNEYS GENERAL SINCE THE ADOPTION OF CONSTITUTION IN 1776

1776-1779	Richard B. Smith
1779-1782	Richard B. Smith
1782-1785	Richard B. Smith
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1998-2001	Richard B. Smith
2001-2004	Richard B. Smith
2004-2007	Richard B. Smith
2007-2010	Richard B. Smith
2010-2013	Richard B. Smith
2013-2016	Richard B. Smith
2016-2019	Richard B. Smith
2019-2022	Richard B. Smith

EXHIBIT I

CIVIL ACTIONS PENDING OR DISPOSED OF IN THE COURTS OF NORTH CAROLINA

PENDING IN THE SUPERIOR COURTS OF NORTH CAROLINA

Town of Mocksville v. Fisher Dulin & Wife.
City of Charlotte v. George W. Parr, et al.
Board of Education, et al. v. Eugene G. Shaw, Commissioner of Revenue, et al.
Cozier Container Corp. v. N. C. Pulp Company, et al.
Raymond Ralph Fox v. Edward Scheidt, Commissioner of Motor Vehicles.
John J. Hood v. Edward Scheidt, Commissioner of Motor Vehicles.
Wade Stephen Parker v. Edward Scheidt, Commissioner of Motor Vehicles.
J. W. Redman v. Edward Scheidt, Commissioner of Motor Vehicles.
Pure Oil Company of the Carolinas v. Maxwell, Commissioner of Revenue.
In the Matter of Frank S. Davis and/or Arline McBride Davis.
State of North Carolina ex rel. Commissioner of Revenue v. D. E. Graham, Jr.
State ex rel. Department of Revenue v. Frank Davis, et al.
Cherokee County and Town of Andrews v. Oran C. Luther and wife, Elma Luther and Andy W. Luther and Eugene G. Shaw, Commissioner of Revenue.
J. A. Baker v. Edward Scheidt, Commissioner of Motor Vehicles.
New Hanover County, et al v. W. T. Maree et ux and State of North Carolina ex rel. Commissioner of Revenue.
City of Wilmington and New Hanover County v. John Martin and Eugene G. Shaw, Commissioner of Revenue.
J. Exum and Company v. Eugene G. Shaw, Commissioner of Revenue.
A. Ray Trexler v. Eugene G. Shaw, Commissioner of Revenue, et als.
Robinson & Hale, Inc. v. Eugene G. Shaw, Commissioner of Revenue.
Equipment Finance Corporation v. Edward Scheidt, Commissioner of Motor Vehicles.
Mrs. Frances Davis Chance v. State of North Carolina ex rel, Commissioner of Revenue, et al.
June Hayes v. Eugene G. Shaw, Commissioner of Revenue.
Commercial National Bank, et al. v. Eugene G. Shaw, Commissioner of Revenue.
Burroughs Adding Machine Company v. Edwin Gill, Commissioner of Revenue.
Commissioner of Revenue of State of North Carolina v. Harvey H. Stewart.

Eugene G. Shaw, Commissioner of Revenue of the State of North Carolina v. F. D. Smith, et al.
North Carolina Department of Revenue v. S. W. Ellis t/a Dub's Grill.
Marion Davis v. Eugene G. Shaw, Commissioner of Revenue.
R. L. Lewis and Huger S. King v. Chas. M. Johnson, State Treasurer.
J. H. Akins v. B. D. Perry.
E. C. Bivens, Surviving Executor, etc. v. Harry McMullan, Attorney General, et al.
Martin Oaksmith, Petitioner, v. Rowland McClamrock, et al.
Lambert R. Morris v. Mason, et al. and State Board of Education.
James M. Scarborough, et al. v. Mrs. Lizzie A. Wright.
W. W. Brittain, et al. v. Harry McMullan, Attorney General.
Wachovia B. & T. Co., Executor, v. Elsie Brown, et al. and Attorney General.
S. D. Ellison v. Hunsinger, and State Warehouse Superintendent.
Henry M. James, et al. v. Leary M. Perry, et al. and Attorney General.
J. P. Warren & Wife v. City of Charlotte, et al.
W. Va. Pulp & Paper Co. v. Richmond Cedar Works, Inc., et al.
W. Va. Pulp & Paper Co. v. W. P. Basnight, et al.
James W. Scarborough, et al. v. James I. Gray, et al.
Asphalt & Petroleum Co., Inc. v. Ives and State Board of Education, et al.
Geo. R. Wallace, et al. v. Evans and State Board of Education, et al.
Jessie McDuffie, et al. v. City of Lumberton and Attorney General.
Clifton Clement Bennett, Exr. v. W. L. Bennett, et al. and Attorney General.
Atlantic Creosoting Co., Inc. v. Orrell Realty Co., et al.
George W. and Georgia Salter v. State Board of Education, et al.
Roland D. Owens, Petitioner, v. Theodore S. Meekins, et al.
Jos. R. Pittman, et al. v. City of Rocky Mount, et al.
State ex rel. State Board of Education v. Batts, et al.
John Felix Parlier v. Board of Comm'rs, Law Enforcement, etc. Retirement Fund.
State ex rel Banking Commission v. Proposed Stanly Industrial Bank.
Wiscassett Mills Co. v. Shaw, Comm'r of Revenue.

PENDING IN THE SUPERIOR COURTS OF NORTH CAROLINA

State of North Carolina ex rel. Utilities Commission v. Roanoke Freight Lines, Inc.
State ex rel. Utilities Commission v. Piedmont Mountain Freight Lines, Inc. (Two).
State of North Carolina ex rel. Utilities Commission v. Harry Lockhart and Leo Wallace Yancey.

State of North Carolina ex rel. Utilities Commission v. W. B. Strickland t/a Strickland Transfer.
State of North Carolina ex rel. Utilities v. J. F. Reynolds & Hal Teachey, Jr., d/b/a Clinton Bus Lines.
State of North Carolina ex rel. Utilities Commission v. Atlantic Coast Line Railroad Company. (Two).
State of North Carolina ex rel. Utilities Commission v. Ben F. Aycock, d/b/a Royal Oaks Water System.
State of North Carolina ex rel. N. C. Utilities Commission v. Atlantic Greyhound Corporation and Wilkes Transportation Company. (Two).
State of North Carolina ex rel. Utilities Commission v. Great Southern Trucking Company, and others.
State of North Carolina ex rel. Utilities Commission v. J. K. Pinnell, John Dawson and Louis Dawson.
State of North Carolina ex rel. Utilities Commission v. V. C. O. Story, et al.
State of North Carolina ex rel. Utilities Commission v. City of Shelby.
State of North Carolina ex rel. Utilities Commission v. City of Kings Mountain.
State of North Carolina ex rel. Utilities Commission v. Morgan Transportation, Incorporated.
State of North Carolina ex rel. Utilities Commission v. K & Y Motor Lines.

DISPOSED OF IN SUPERIOR COURTS OF NORTH CAROLINA

Arline McBride Davis v. Eugene G. Shaw, Commissioner of Revenue, et al.
Southeastern Factors v. Eugene G. Shaw, Commissioner of Revenue.
Frank L. Gilbreath v. Edward Scheidt, Commissioner of Motor Vehicles.
Frank L. Gilbreath v. Edward Scheidt, Commissioner of Motor Vehicles.
Jenkins Hardware Company v. Eugene G. Shaw, Commissioner of Revenue.
Bernside Mills v. Eugene G. Shaw, Commissioner of Revenue.
M. D. Miles v. L. R. Fisher, Commissioner of Motor Vehicles.
Clifford Passons v. Eugene G. Shaw, Commissioner of Revenue.
Yellow Cab Company v. City of Raleigh.
W. M. Darden v. Edward Scheidt, Commissioner of Motor Vehicles.
S. E. Moseley v. Edward Scheidt, Commissioner of Motor Vehicles.
White & Company, Inc. v. Eugene G. Shaw, Commissioner of Revenue.
Hugh S. Vann t/a Vann Auto Sales v. Eugene G. Shaw, Commissioner of Revenue for the State of North Carolina.
Wake County v. W. H. Dickerson.

Southern Oil Transportation Company, Inc. v. L. C. Rosser, Commissioner of Motor Vehicles.
In re: Suspension of License to Operate a Motor Vehicle of Clarence Albert Ross.
Victory Cab Company, Inc. v. Eugene G. Shaw, Commissioner of Revenue.
Eugene G. Shaw, Commissioner of Revenue v. T. H., Alice Williams, et al.
Luther Lee Mintz v. Edward Scheidt, Commissioner of Motor Vehicles.
Lloyd Phillips, t/a Phillips Motor Co. v. Eugene G. Shaw, Comm'r of Revenue.
H. C. Buchan t/a North Wilkesboro Hardware v. Eugene G. Shaw, Comm'r of Revenue.
R. A. Winesett v. Edward Scheidt, Commissioner of Motor Vehicles..
E. M. Beaty v. Eugene G. Shaw, Commissioner of Revenue.
Beaty Service Company, Inc. v. Eugene G. Shaw, Commissioner of Revenue.
State ex rel. Utilities Commission v. Richard Norwood Pate and Reddie Claxton Pate, d/b/a Pate Transfer.
State ex rel. Utilities Commission v. Miller Motor Express, et al.
State ex rel. Utilities Commission v. Paul E. Ricks, et al.
State ex rel. Utilities Commission v. H. Grover Brigman.
State ex rel. Utilities Commission v. E. C. Robbins, Town of Wake Forest, et al.
Stanly County Hospital, Inc. v. Yadkin Hospital, Inc.
Jas. M. Scarborough, et al. v. F. L. Andrews.
In the Matter of Blue Bird Taxi Co.
Lee Sams v. Dr. John S. McKee, et al.
Floyd Greene, Admr. v. State Board of Education, et al.
Martha M. G. Sweatt, etc. v. State Board of Education, et al.
C. G. Brickle v. George R. Ross, et al.
W. Forrest Bedell v. State Board of Elections.
Guy Outlaw v. Janie Rascoe Outlaw, et al.
Board of Education, Dare County v. H. P. Taylor, et al.
In re: Bid Bonds—Collection of Premiums.
McRae v. Retirement System.
Hugh Thomas Tucker v. State A.B.C. Board.
Gill v. Bullock's, Inc., et al.
State ex rel. Shaw, Comm'r of Revenue v. Walter J. Clark, et al.
State of N. C. v. Commonwealth Fuel Co.
Winston-Salem v. Realty Bond Co., et al.
Robert Samuel Weathers v. Department of Motor Vehicles.

PENDING IN NORTH CAROLINA SUPREME COURT

B. J. Parmele v. Kenneth Eaton.
Luther Lee Mintz v. Edward Scheidt, Commissioner of Motor Vehicles.
Johnson, Administrator v. State Board of Education.

State ex rel. Utilities Commission v. State of N. C. and N. C. Department of Agriculture.

DISPOSED OF IN NORTH CAROLINA SUPREME COURT

Loyd Phillips t/a Phillips Motor Company v. Eugene G. Shaw, Commissioner of Revenue.
H. C. Buchan t/a North Wilkesboro Hardware v. Eugene G. Shaw, Commissioner of Revenue.
R. A. Winesett v. Edward Scheidt, Commissioner of Motor Vehicles.
Floyd Greene, Admr. v. State Board of Education, et al.
Martha M. G. Sweatt, etc. v. State Board of Education, et al.
In re: Samuel Thompson.
State ex rel. Utilities Commission v. Leicester Bus Lines.
State ex rel. Utilities Commission v. Richard A. Shaw, et al.
State ex rel. Utilities Commission v. C. A. Davis, et al.
State ex rel. Utilities Commission v. Atlantic Coast Line Railroad Co.
State ex rel. Utilities Commission v. Carolina Telephone & Telegraph Company (2 cases).
State ex rel. Utilities Commission v. State of N. C. and Department of Justice.
State ex rel. v. Southern Bell Telephone and Telegraph Company (same case).

PENDING BEFORE NORTH CAROLINA INDUSTRIAL COMMISSION
(*Workmen's Compensation Cases*)

Caswell M. Andrews v. North Carolina Memorial Hospital.
Allen Barefoot v. Department of Conservation and Development.
Francis Allen Dunbar v. State Hospital at Raleigh.
Joseph Jacobs v. Pembroke State College.
Margie Renfrow v. State Hospital at Raleigh.
Bristol Mack Distributing Co. v. Dept. of Motor Vehicles.

DISPOSED OF BEFORE NORTH CAROLINA INDUSTRIAL COMMISSION
(*Workmen's Compensation Cases*)

Austin Adams v. Craven County Board of Education.
K. W. Ballentine v. Department of Agriculture.
Doris B. Bentley, Widow, George F. Bentley, Deceased, v. University of North Carolina.
James Braxton v. East Carolina College.
Ed Cabe v. Macon County Board of Education, et al.
A. M. Catlette v. State Hospital at Raleigh.
Frank Duff v. State Board of Education.
Grady Duncan v. Division of State Parks.
Hugh Anderson Johnson v. Warren County Board of Education, et al.

Pearl L. Jones v. State Hospital at Butner.
George C. Knox, Administrator Estate of Mrs. J. C. Kerr, v.
Rowan County Board of Education.
John T. McCurry v. Yancey County Board of Education.
R. E. Saunders, Administrator CTA Estate of Maud McKinnon,
Deceased, v. N. C. State Board of Education.
Louis O'Neal v. North Carolina State College.
Bettie Packer v. North Carolina State Board of Health.
Alice Perry, Mother of Lonnie A. Perry, Deceased, v. N. C.
Board of Correction and Training.
Amelia P. Perry v. Granville County Board of Education.
Joseph S. Powell v. State Hospital at Goldsboro.
Sam J. Sparrow v. University of North Carolina.
Roy Stamey v. State Hospital at Morganton.
Clumpertee Tucker v. North Carolina State Board of Education.
Jimmy Wilkins v. State Hospital at Raleigh.

DISPOSED OF IN THE UNITED STATES SUPREME COURT

Clyde Brown v. State of North Carolina.
David Brock v. State of North Carolina.
Lafayette Miller v. State of North Carolina.
Rufus Leonard v. State of North Carolina.
L. C. Parker v. State of North Carolina.
Charles B. McGee v. State of North Carolina.
Joe Towery v. State of North Carolina.
Howard Seaboy Tickle v. State of North Carolina.
Carmichael v. McKissick, et al.
Raleigh Speller v. State of North Carolina.

PENDING IN UNITED STATES DISTRICT COURT

Ellis v. Wilson Public School District.
Butts, et al. v. Board of Education of Perquimans County.
Weaver, et al. v. H. P. Taylor, et al.
Johnson v. State Board of Education.
Alice Hanibal, et al. v. H. P. Taylor, et al.
Leonard Keele, et al. v. H. P. Taylor, et al.
Charlie Royster, et al. v. Board of Education of Person County,
et al.
Lionel C. Carson, et al. v. Board of Education of McDowell
County.
Wallace and Taylor v. State Board of Education, et al.
John Froneberger, et al. v. State Superintendent of Public In-
struction, et al.
Carolina-Virginia Racing Association v. Cohoon, et al.

DISPOSED OF IN UNITED STATES DISTRICT COURT

James Edward Thomas v. Gray, President, et al.

Robert Hamer v. State of North Carolina.

Winborne v. Taylor, et al.

DISPOSED OF IN CALIFORNIA SUPERIOR COURT

North Carolina ex rel. Eugene G. Shaw, Commissioner of Revenue v. J. Robert Jordan, Sr.

EXHIBIT II

LIST OF CRIMINAL CASES ARGUED BY THE ATTORNEY GENERAL
AND HIS ASSOCIATES BEFORE THE NORTH CAROLINA SUPREME
COURT: FALL TERM, 1952, SPRING TERM, 1953; FALL
TERM, 1953, SPRING TERM, 1954.

FALL TERM, 1952

- State v. Alston, from Lee; violating liquor laws; defendant appealed; reversed; 236 N. C. 299.
- State v. Avery, et al., from Johnston; violating liquor laws; defendant Peacock appealed; no error; 236 N. C. 276.
- State v. Brady, from Lee; violating liquor laws; defendant appealed; new trial; 236 N. C. 295.
- State v. J. Bryant, from Sampson; larceny; defendant appealed; dismissed; 236 N. C. 379.
- State v. W. H. Bryant, from Mecklenburg; breaking, entering, larceny; defendant appealed; no error, 236 N. C. 745.
- State v. Call, from Wilkes; reckless driving; defendant appealed; new trial; 236 N. C. 333.
- State v. Cunningham, et al., from Mecklenburg; violating liquor laws; defendants appealed; no error; 236 N. C. 499.
- State v. Daughtry, from Pitt; violating motor vehicle laws; defendant appealed; no error; 236 N. C. 316.
- State v. Griffin, from Henderson; manslaughter; defendant appealed; no error; 236 N. C. 219.
- State v. Harper, from Greene; violating liquor laws; defendant appealed; no error; 236 N. C. 371.
- State v. Hedrick, et al., from Guilford; conspiracy, etc.; defendant Snow appealed; no error; 236 N. C. 727.
- State v. Hill, from Gaston; violating liquor laws; defendant appealed; no error; 236 N. C. 704.

- State v. Hoskins, et al., from Craven; receiving stolen goods; defendant Lockley appealed; reversed; 236 N. C. 412.
- State v. Humphrey, from Robeson; nonsupport, etc.; defendant appealed; no error; 236 N. C. 608.
- State v. Kimrey, from Yadkin; violating liquor laws; defendant appealed; new trial; 236 N. C. 313.
- State v. Love, from Watauga; violating liquor laws; defendant appealed; reversed; 236 N. C. 344.
- State v. McLamb, from Johnston; violating liquor laws; defendant appealed; reversed; 236 N. C. 287.
- State v. Merritt, from Pitt; rape, with recommendation; defendant appealed; no error; 236 N. C. 363.
- State v. Moore, from Guilford; murder 2d degree; defendant appealed; no error; 236 N. C. 617.
- State v. Murphy, from Sampson; violating liquor laws; defendant appealed; appeal dismissed; 236 N. C. 380.
- In re: Miller (Miller v. State), from Beaufort; murder 1st degree; defendant appealed; affirmed; 237 N. C. 29.
- State v. Rainey, from Guilford; violating liquor laws; defendant appealed; no error; 236 N. C. 738.
- State v. Robinson, from Catawba; nonsupport; defendant appealed; new trial; 236 N. C. 408.
- State v. Simmons, from Craven; murder 1st degree; defendant appealed; new trial; 236 N. C. 340.
- State v. Smith, et al., from Guilford; conspiracy to violate lottery law; defendant Smith appealed; reversed; 236 N. C. 748.
- State v. F. D. Smith, et al., from Guilford; conspiracy to give bribes, etc.; defendants appealed; no error; 237 N. C. 1.
- State v. T. W. Thomas, from Edgecombe; violating liquor laws; defendant appealed; error and remanded; 236 N. C. 196.
- State v. R. Thomas, from Greene; violating liquor laws; defendant appealed; judgment arrested; 236 N. C. 454.
- State v. Tripp, from Greene; violating liquor laws; defendant appealed; affirmed; 236 N. C. 320.
- State v. Tyndall, from Lenoir; violating liquor laws; defendant appealed; no error; 236 N. C. 365.
- State v. Walker, from Wilkes; manslaughter; defendant appealed; new trial; 236 N. C. 742.
- State v. Warren, from Greene; violating liquor laws; defendant appealed; new trial; 236 N. C. 358.

DISMISSED ON MOTION

- State v. Joyner, from Edgecombe.
- State v. Lefevers, from Catawba.
- State v. Hayes, from Moore.
- State v. Reid, from Alamance.

ON PETITION FOR CERTIORARI:

State v. McGarr, et al.—denied.

In re: Ransom, denied.

In re: Mauldin, denied.

In re: Harbison, denied.

SPRING TERM, 1953

State v. Albarty, from Forsyth; sale of lottery tickets; defendant appealed; new trial; 238 N. C. 130.

State v. Bailey, from Edgecombe; violating motor vehicle laws; defendant appealed; judgment arrested; 237 N. C. 273.

State v. Bennett, from Cumberland; (1) conspiracy, (2) larceny; defendant appealed; no error; 237 N. C. 749.

State v. Bowen, from Durham; assault with deadly weapon; defendant appealed; judgment arrested; 237 N. C. 766.

State v. Brady, from Richmond; receiving stolen goods; defendant appealed; new trial; 237 N. C. 675.

State v. Bright, from Duplin; manslaughter; defendant appealed; no error; 237 N. C. 475.

State v. Brown, from Craven; assault with deadly weapon with intent to kill, etc.; defendant appealed; affirmed; 237 N. C. 439.

State v. Buck, from Pitt; assault with deadly weapon; defendant appealed; no error; 237 N. C. 434.

State v. Cranfield, from Forsyth; "uttering" forged check; defendant appealed; no error; 238 N. C. 110.

State v. Cruze, from Lenoir; (1) conspiracy to assault and rob, (2) Assault with deadly weapon, (3) larceny; petition for certiorari allowed; affirmed; 238 N. C. 53.

State v. Doughtie, from Edgecombe; criminal assault with deadly weapon; defendant appealed; error and remanded for judgment; 237 N. C. 368.

State v. Gaskins, from Craven; violating liquor laws; defendant appealed; appeal dismissed; 237 N. C. 438.

State v. Ham, et al., from Ashe; murder second degree; defendants appealed; reversed as to Leonard Teaster; other defendants, new trial; 238 N. C. 94.

State v. Hill, from Davidson; receiving; defendant appealed; no error; 237 N. C. 764.

State v. Honeycutt, from Avery; resisting and obstructing officer; defendant appealed; no error; 237 N. C. 595.

State v. Ingram, from Caswell; assault on female; defendant appealed; reversed; 237 N. C. 197.

State v. Lee, from Beaufort; driving under influence, etc.; defendant appealed; no error; 237 N. C. 263.

State v. Loesch, from Mecklenburg; practicing medicine without license; State appealed; reversed; 237 N. C. 611.

State v. McGee, from Mecklenburg; violating municipal Sunday law; defendant appealed; no error; 237 N. C. 633.

- State v. Messimer, from Mecklenburg; assault, inflicting serious injury; defendant appealed; new trial; 237 N. C. 617.
- State v. Norman, from Washington; simple assault; State appealed; reversed; 237 N. C. 205.
- State v. Pitt, from Edgecombe; violating motor vehicle laws; defendant appealed; judgment arrested; 237 N. C. 274.
- State v. Rawley, from Surry; manslaughter; defendant appealed; no error; 237 N. C. 233.
- State v. Scott, from Craven; assault with deadly weapon; defendant appealed; judgment arrested; 237 N. C. 432.
- State v. Smith, from Guilford; (1) "hit and run," (2) involuntary manslaughter; defendant appealed; no error; 238 N. C. 82.
- State v. Stroupe, et al., from Gaston; game of chance; defendants appealed; new trial; 238 N. C. 34.
- State v. Triplett, from Watauga; manslaughter; defendant appealed; no error; 237 N. C. 604.
- State v. Williams, from Craven; violating motor vehicle law; defendant appealed; no error; 237 N. C. 435.
- State v. Williams, from Craven; violating motor vehicle law; defendant appealed; judgment arrested; 237 N. C. 436.
- State v. Wilson, from Davidson; violating liquor laws; defendant appealed; no error; 237 N. C. 746.

DISMISSED ON MOTION

- State v. Holley, from Chowan.
- State v. Sessoms, from Bertie.
- State v. Morrow, from Rutherford.
- State v. Bryant, from Craven.
- State v. Flowers, from Rowan.
- State v. Whitaker, from Davie.
- State v. Morgan, from Orange.
- State v. Ward, from Davie.

ON PETITION FOR CERTIORARI:

- State v. Evans, allowed.
- In re: Renfrow, allowed.
- State v. Moore, denied.
- Streeton v. State, denied.

PETITION FOR WRIT OF ERROR CORAM NOBIS:

- State v. Daniels, et al., denied.

FALL TERM, 1953

- State v. Bennett, from Craven; violating motor vehicle law; State appealed; reversed; 238 N. C. 549.
- State v. Brady, from Lee; violating liquor law; defendant appealed; new trial; 238 N. C. 404.

- State v. Brady, from Lee; violating liquor law; defendant appealed; No. 6908, new trial; No. 6909, remanded for judgment; 238 N. C. 407.
- State v. Bridgers, from Gaston; assault with deadly weapon, with intent to do bodily injury; defendant appealed; no error; 238 N. C. 677.
- State v. Brown, from Edgecombe; violating liquor laws; defendant appealed; no error; 238 N. C. 260.
- State v. Willie Chambers, from Wilkes; nonsupport, etc.; defendant appealed; no error; 238 N. C. 373.
- State v. O. M. G. Chambers, from Richmond; felonious breaking, entering and larceny; defendant appealed; no error; 239 N. C. 114.
- State v. Cooper, from Buncombe; felonious assault; defendant appealed; affirmed; 238 N. C. 241.
- State v. Davis, from Surry; violating liquor laws; defendant appealed; no error; 238 N. C. 252.
- State v. Dockery, from Cherokee; murder first degree; defendant appealed; new trial; 238 N. C. 222.
- State v. Doughtie, from Edgecombe; criminal assault with deadly weapon; defendant appealed; affirmed; 238 N. C. 228.
- State v. N. J. Ferguson, et al., from Mecklenburg; violating liquor laws; defendants appealed; P. Ferguson, reversed; other defendants, no error; 238 N. C. 639.
- State v. Garris, from Edgecombe; felonious assault; defendant appealed; no error; 238 N. C. 263.
- State v. Gibbs, from Beaufort; violating liquor laws; defendant appealed; no error; 238 N. C. 258.
- State v. Grainger, from Columbus; violating liquor laws; defendant appealed; reversed; 238 N. C. 739.
- State v. Grayson, from Bladen; murder first degree; defendant appealed; new trial; 239 N. C. 453.
- State v. Green, from Buncombe; assault with intent to rape; defendant appealed; new trial; 238 N. C. 257.
- State v. Greer, from McDowell; bribery; defendant appealed; reversed; 238 N. C. 325.
- State v. Griffin, from Mecklenburg; (1) larceny, (2) embezzlement; defendant appealed; no error; 239 N. C. 41.
- State v. Howell, from Scotland; murder first degree; defendant appealed; new trial; 239 N. C. 78.
- State v. Jenkins and Thorne, from Edgecombe; disorderly conduct, obstructing officer, simple assault; Jenkins, judgment arrested; 238 N. C. 396; Thorne, simple assault, no error; all other charges, judgment arrested; 238 N. C. 392.
- State v. Love, from Caswell; nonsupport; defendant appealed; no error; 238 N. C. 283.
- State v. McIntyre, from Polk; violating motor vehicle laws; defendant appealed; affirmed; 238 N. C. 305.
- State v. Moore, from New Hanover; nonsupport; defendant appealed; judgment arrested; 238 N. C. 743.

- State v. Nall, from Moore; violating motor vehicle laws; defendant appealed; no error; 239 N. C. 60.
- State v. Pettiford, from Person; assault with deadly weapon; defendant appealed; no error; 239 N. C. 301.
- State v. Poplin, from Mecklenburg; manslaughter; defendant appealed; new trial; 238 N. C. 728.
- State v. Porter, from Mecklenburg; assault on female; defendant appealed; no error; 238 N. C. 735.
- State v. J. Powell, from Catawba; murder second degree; defendant appealed; no error; 238 N. C. 527.
- State v. T. Powell, from Duplin; violating liquor laws; defendant appealed; judgment affirmed; appeal dismissed; 238 N. C. 550.
- State v. Ritter, et al., from Moore; assault with deadly weapon with intent to kill; defendants appealed; no error; 239 N. C. 89.
- State v. Satterwhite, from Mecklenburg; felonious assault; defendant appealed; new trial; 238 N. C. 674.
- State v. Shinn, from Cabarrus; violating liquor laws; defendant appealed; no error; 238 N. C. 535.
- State v. Sloan, from Craven; violating motor vehicle laws; State appealed; reversed; 238 N. C. 547.
- State v. Sloan, from Wake; violating liquor laws; defendant appealed; no error; 238 N. C. 672.
- State v. Tickle, from Caswell; nonsupport; defendant appealed; no error; 238 N. C. 206.
- State v. Tilley, et al., from Forsyth; conspiracy and larceny; defendant Snow appealed; new trial; 239 N. C. 245.
- State v. Towery, from Guilford; violating municipal Sunday ordinance; defendant appealed; no error; 239 N. C. 274.
- State v. Turbeville, from Robeson; involuntary manslaughter; defendant appealed; no error; 239 N. C. 25.
- State v. Turner, from Henderson; larceny; defendant appealed; reversed; 238 N. C. 411.
- State v. Williamson, from Franklin; (1) carrying concealed weapon, (2) assault with deadly weapon; defendant appealed; no error; 238 N. C. 652.
- State v. Wingler, et al., from Wilkes; murder second degree; defendants appealed; no error; 238 N. C. 485.
- State v. Wooten, from Columbus; violating liquor laws; defendant appealed; reversed; 239 N. C. 117.

DISMISSED ON MOTION

- State v. Cohoon, from Tyrrell.
- State v. Evans, from Beaufort.
- State v. Ward, from Davie.
- State v. Graham, from Guilford.
- State v. Lovedahl, from Jackson.

ON PETITION FOR CERTIORARI:

State v. Bentley, allowed.

SPRING TERM, 1954

- State v. Ayscue, from Franklin; forgery and uttering; defendant appealed; no error; 240 N. C. 196.
- State v. Baker, et al, from Wake; violating liquor laws; defendants appealed; appeal dismissed; 240 N. C. 140.
- State v. Barley, from Randolph; violating liquor laws; defendant appealed; reversed and remanded; 240 N. C. 253.
- State v. Bolling, from Wake; violating liquor laws; defendant appealed; no error; 240 N. C. 141.
- State v. Bournias, from Guilford; manslaughter; defendant appealed; no error; 240 N. C. 311.
- State v. Canipe, from Cleveland; murder 1st degree; defendant appealed; new trial; 240 N. C. 60.
- State v. Cephus, from Edgecombe; assault with deadly weapon; defendant appealed; new trial; 239 N. C. 521.
- State v. Collins, from Onslow; receiving stolen goods, etc.; defendant appealed; reversed; 240 N. C. 128.
- State v. Cope, from Gaston; crime against nature; incest; defendant appealed; reversed; 240 N. C. 244.
- State v. Crocker, from Wilson; murder 1st degree; defendant appealed; reversed; 239 N. C. 446.
- State v. Dawes, from Nash; violating liquor laws; defendant appealed; no error; 239 N. C. 535.
- State v. Dyer, from Wayne; receiving stolen goods; defendant appealed; new trial; 239 N. C. 713.
- State v. Felton, from Currituck; gambling; State appealed; reversed; 239 N. C. 575.
- State v. Fraylon, from Guilford; fraudulent insurance claim; defendant appealed; reversed; 240 N. C. 365.
- State v. Gales, from Hoke; murder 1st degree; defendant appealed; no error; 240 N. C. 319.
- State v. Hackney, from Chatham; robbery with firearms; defendant appealed; affirmed; 240 N. C. 230.
- State v. Hall, from Craven; violating liquor laws; defendant appealed; judgment arrested; 240 N. C. 109.
- State v. Hamer, from Duplin; rape; defendant appealed; no error; 240 N. C. 85.
- State v. Harrison, from Edgecombe; violating liquor laws; defendant appealed; no error; 239 N. C. 659.
- State v. Hart, from Harnett; manslaughter; defendant appealed; new trial; 239 N. C. 709.
- State v. Hines, et al, from Robeson; violating liquor laws; defendants appealed; no error; 240 N. C. 337.
- State v. Matheay, from Durham; larceny, receiving stolen goods; defendant appealed; new trial; 240 N. C. 433.

- State v. Mobley, from Gaston; resisting officer; simple assault; opinion not handed down.
- State v. Myers, from Forsyth; receiving stolen goods; defendant appealed; no error; 240 N. C. 462.
- State v. McClain, from Wake; prostitution, etc.; defendant appealed; new trial; 240 N. C. 171.
- State v. McNeill, from Harnett; violating liquor laws; defendant appealed; judgment affirmed; 239 N. C. 679.
- State v. McRae, from Robeson; violating liquor laws; defendant appealed; new trial; 240 N. C. 334.
- State v. Phillips, et al., from Gaston; false pretense; opinion not handed down.
- State v. Sailor, from Cabarrus; subornation of perjury; defendant appealed; reversed; 240 N. C. 113.
- State v. Smith, from Lenoir; violating motor vehicle laws; defendant appealed; new trial; 240 N. C. 99.
- State v. Spencer, from Harnett; murder 2d degree; defendant appealed; no error; 239 N. C. 605.
- State v. Stantliff, from Robeson; violating motor vehicle laws; defendant appealed; no error; 240 N. C. 332.
- State v. Stewart, from Currituck; gambling; State appealed; reversed; 239 N. C. 589.
- State v. Taylor, from Lenoir; violating motor vehicle laws; defendant appealed; no error; 240 N. C. 117.
- State v. Tolbert, from Guilford; manslaughter; defendant appealed; reversed; 240 N. C. 445.
- State v. Truitt, from Currituck; gambling; State appealed; reversed; 239 N. C. 590.
- State v. Wortham, from Franklin; nonsupport, etc.; defendant appealed; new trial; 240 N. C. 132.

DISMISSED ON MOTION

- State v. Glover and Beck, from Buncombe.
- State v. Jackson, from Johnston.
- State v. Manley, from Buncombe.
- State v. Mims, from Caswell.
- State v. Gainey, from Pitt.
- State v. Hayes, from Forsyth.
- State v. Gaddy, from Mecklenburg.

ON PETITION FOR CERTIORARI

- State v. Davies, denied.
- State v. Jenkins, denied.
- State v. Aycock, denied.
- State v. Thompson, denied.
- State v. Ashe, denied.
- State v. Dillon, denied.
- State v. Crider, remanded.
- In re: Bentley, reversed and remanded.

SUMMARY

Affirmed on defendant's appeal	72
Affirmed on State's appeal	—
New trial on defendant's appeal	30
New trial on State's appeal	—
Reversed on defendant's appeal	19
Reversed on State's appeal	7
Error and remanded	3
Judgment arrested	9
Appeal dismissed	4
Dismissed on motion	24
Certiorari allowed	3
Certiorari denied	12
Certiorari remanded	2
Coram nobis	1
Opinions not handed down	2

FEES TRANSMITTED BY ATTORNEY GENERAL TO STATE TREASURER SINCE
FEBRUARY TERM, 1952, THROUGH FEBRUARY TERM, 1954

State v Scoggins	\$ 10.00
State v Taylor	10.00
State v Williams	10.00
State v Leonard	10.00
State v Lefevers	10.00
State v Daughtry	10.00
State v Tripp	10.00
State v Williams	10.00
State v Harper	10.00
State v Murphy	10.00
State v Gaston	20.00
State v Humphrey	10.00
State v Griffin	10.00
State v Bryant	10.00
State v Hedrick, et al	10.00
State v Rainey	10.00
State v Smith	10.00
State v Lee	10.00
State v Rawley	10.00
State v Peacock	10.00
State v Tyndall	10.00
State v Bryant	10.00
State v Buck	10.00
State v Ferrell, et al	40.00
State v Hill	10.00
State v Holley	10.00
State v Bright	10.00
State v Triplett	10.00
State v Honeycutt	10.00
State v McGee	10.00

State v Gaskins	10.00
State v Williams	10.00
State v Brown	10.00
State v Smith	10.00
State v Hill	10.00
State v Bennett	10.00
State v Wilson	10.00
State v Cranfield	10.00
State v Davis	10.00
State v Garris	10.00
State v McIntyre	10.00
State v Thorne	10.00
State v Gibbs	10.00
State v Tickle	10.00
State v Doughtie	10.00
State v Chambers	10.00
State v Love	10.00
State v Shinn	10.00
State v Bridges	10.00
State v Wingler, et al.	20.00
State v Williams	10.00
State v Powell	10.00
State v Nall	10.00
State v Ritter, et al	20.00
State v Turbeville	10.00
State v Powell	10.00
State v Ferguson, et al	20.00
State v Griffin	10.00
State v Brown	10.00
State v Sloan	10.00
State v Towery	10.00
State v Porter	10.00
State v Pettiford	10.00
State v Dawes	10.00
State v Taylor	10.00
State v Harrison	10.00
State v McNeill	10.00
State v Bolling	10.00
State v Bournias	10.00
State v Baker	20.00
State v Ayscue	10.00
State v Stantliff	10.00

 \$800.00

SUMMARY OF ACTIVITIES

STAFF PERSONNEL

There have been very few changes in the staff personnel since the publication of the Biennial Report of 1950-52.

Assistant Attorneys General T. W. Bruton, Ralph Moody, Claude L. Love, Dr. I. Beverly Lake, Harry W. McGalliard, and John Hill Paylor served throughout the biennium.

Robert B. Broughton, member of the staff, resigned effective the 1st of October, 1952, to enter the private practice of law, and was succeeded by Gerald F. White.

On the 1st of May, 1953, Edward B. Hipp resigned to enter the private practice of law and was succeeded by Charles G. Powell, Jr., as Revisor of Statutes.

On the 1st of August, 1953, Max O. Cogburn was appointed Director of the Division of Legislative Drafting and Codification of Statutes and as Director of the Division of Statistics to fill the vacancy caused by the appointment of Mr. Powell as Revisor of Statutes.

On the 1st of June, 1952, Samuel Behrends, Jr., was appointed as a member of the staff and assigned to duties with Assistant Attorneys General Lake and McGalliard.

On the 4th of January, 1954, Robert L. Emanuel, member of the staff, resigned to enter the private practice of law and was succeeded by William P. Mayo.

On the 1st of February, 1954, Worth H. Hester was appointed as a member of the staff and assigned to duties with the Welfare Department.

The secretarial staff serving during the biennium is as follows: Mrs. Lorraine H. Allers, Miss Elizabeth Flourney, Mrs. Charles W. Purcell, Mrs. T. P. Norwood, Miss Lillian Turner, Mrs. W. K. Leach, Miss Bettie R. Stallings, Miss Mary Elizabeth Hamm, Miss Mary E. Williams, Mrs. Louise Bragg, Mrs. Eunice Murphy, and Mrs. Myrtle K. Pope.

SUMMARY OF THE CONSTITUTIONAL AND STATUTORY DUTIES OF THE ATTORNEY GENERAL

In the interest of economy, reference is made to former reports of this office for a summary of the constitutional statutory duties of the Attorney General.

GENERAL STATUTES COMMISSION—REVISOR OF STATUTES

In 1947 the General Assembly created the position of Revisor of Statutes on the staff of the Attorney General to serve as ex officio Secretary of the General Statutes Commission and to carry out the duties of the Division of Legislative Drafting and Codification of Statutes relating to continuous statutory research and correction.

The primary purpose in creating this position was to have a full-time research lawyer to work with the General Statutes Commission on the ambiguities, conflicts, duplications and other imperfections in the form and

expression of the statutes, and to consider suggestions submitted from outside sources for improvement in the statutes.

It soon became apparent that many of the changes which were needed in the General Statutes amounted to more than mere imperfections of form and expression and that work was needed on substantive revision of the statutes.

In 1951 the General Assembly gave the General Statutes Commission the additional duty of recommending the enactment of such substantive changes in the law as the Commission might deem advisable. Since that time the principal work of the General Statutes Commission and the Revisor of Statutes has been in the field of substantive law revision. Fifty-three recommendations for substantive changes have already been made to the General Assembly by the Commission, and, with three exceptions, no major bill has failed of enactment.

The Commission will recommend to the 1955 General Assembly the adoption of a new Business Corporation Code for North Carolina. The Commission through a drafting subcommittee has been working on a revision of Chapter 55 of the General Statutes since October, 1951. This subcommittee, acting under the direction of the General Statutes Commission, has drafted a Business Corporation Act which is based upon our present North Carolina Corporation statutes and court decisions, but amended so as to include the desirable features of the Model Business Corporation Act prepared by the American Bar Association and the statutes and decisions of selected states. The General Statutes Commission has conducted a word-by-word review of the work of the Drafting Committee, and has reviewed the Act two times within the past 14 months. The proposed Code has been presented to members of the North Carolina Bar with the request that they make suggestions as to how the Act can be improved. There will also be recommended along with the Business Corporation Act a Non-profit Corporation Act, which will cure a deficiency which has long existed in North Carolina statute law.

The Commission also plans to recommend to the 1955 General Assembly the adoption of the following bills:

- (1) A bill to provide for the allowance of alimony in absolute divorce proceedings.
- (2) A bill to clarify the law with regard to the jurisdiction of disputes dealing with custody of children.
- (3) A bill adopting the Uniform Ancillary Administration of Estates Act.
- (4) A bill rewriting the North Carolina Bulk Sales Act.
- (5) A bill to provide for survivorship in joint bank accounts.
- (6) A bill to provide for instruments to secure future advances.
- (7) A bill dealing with the registration of mortgages of fixtures.
- (8) Several bills dealing with the inheritance rights of adopted, illegitimate and legitimated children.

The present Revisor of Statutes is Charles G. Powell, Jr., who succeeded Edward B. Hipp when the latter resigned to enter private practice in May, 1953. The present members of the General Statutes Commission, together with the source of their appointments, are: Messrs. Robert F. Moseley, Chairman, Greensboro, N. C., (N. C. State Bar Pres.); Malcolm McDermott, Vice Chairman, Duke University Law School, (Dean, Duke

Univ. Law School); James H. Pou Bailey, Raleigh, N. C., (Lt. Gov.); Henry A. McKinnon, Lumberton, N. C., (N. C. Bar Assoc. Pres.); Frank W. Hanft, University of North Carolina Law School, (Dean, U. N. C. Law School); William Joslin, Raleigh, N. C., (Gov.); Robert E. Lee, Wake Forest Law School, (Dean, Wake Forest Law School); William F. Womble, Winston-Salem, N. C., (Speaker of the House); Buxton Midyette, Jackson, N. C., (Gov.). This Commission, as required by law, will make a separate report to the General Assembly covering in detail the full extent of its activities.

FINANCIAL RESPONSIBILITY ACT

Following the enactment by the General Assembly of the Motor Vehicle Safety and Financial Responsibility Act of 1953, many motor vehicle operators throughout the State filed petitions in the various Superior Courts in proceedings asking that the orders of the Department of Motor Vehicles suspending the operator's licenses for failure to comply with the Motor Vehicle Safety and Financial Responsibility Act of 1953 be reversed. The Attorney General filed form answers in all of these proceedings but did not appear personally. During the biennium fifty-three proceedings of this type were instituted and were handled by the Attorney General's office.

TORT CLAIMS AGAINST STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES

By C. 1059 of the Session Laws of 1951 (now codified as Art. 3 of C. 143 of the General Statutes) the Legislature waived to a limited extent the State's immunity from suit. This statute authorizes the filing with the Industrial Commission of claims against State departments, institutions, and agencies for damages caused by the negligent act of a State employee while acting within the scope of his employment. Under this Act it is the responsibility of the Attorney General to represent all departments, institutions, and agencies of the State, other than the State Highway and Public Works Commission.

The following table reflects the activities of the Attorney General's office in discharging this responsibility:

Tort cases disposed of by hearing	212
Tort cases disposed of by settlement	241
Tort cases pending for trial before Industrial Commission	127
Tort cases under investigation for settlement	43
Tort cases pending in Superior Court	3
Tort cases pending in Supreme Court	2

Those cases disposed of by hearing involved claims totalling \$98,720.55. A large number of these claims were denied, and in several instances where claims were allowed the amount allowed was less than that asked. As a result, the amount actually paid out in satisfaction of claims allowed after hearing was \$27,798.79. Two hundred and one of these claims were against the State Board of Education. Of the other eleven claims, five were against the Department of Motor Vehicles, two were against the Department of Conservation and Development, two were against North Carolina State College, and there was one claim each against the University of North Carolina and East Carolina College.

During the past two years it appeared to be to the best interest of the State to enter into compromise settlements of a number of pending claims. The aggregate amount claimed in the 241 cases disposed of by compromise settlement was \$182,592.14. A total of \$82,835.28 was paid in final settlement of these claims. Two hundred and sixteen of these were claims against the State Board of Education. The other 25 were split among the following agencies and institutions in the manner indicated:

Adjutant General	5
University of North Carolina	6
State Hospital at Butner	2
Wildlife Resources Commission	1
Caswell Training School	1
Department of Motor Vehicles	4
Department of Conservation and Development	2
Department of Public Instruction	1
East Carolina College	2
Division of Purchase and Contract	1

At the present time there are 175 claims pending before the Industrial Commission, the superior courts, and the Supreme Court. One hundred and sixty-two of these claims are against the State Board of Education and, of the remaining 13 claims, 6 are against the Department of Motor Vehicles, 2 are against the State Hospital at Butner, 2 are against the University of North Carolina, and there is one claim each against the State Hospital for the Insane, the Utilities Commission, and the Wildlife Resources Commission. The total amount of these pending claims is \$136,405.83. For purposes of comparison it may be noted that, as of July 1, 1952, 65 claims in which \$61,845.03 was asked were pending. It is expected that the marked expansion of this activity will continue.

There has been one change in the Tort Claims Act since 1952. The Legislature, by C. 1314 of the Session Laws of 1953, provided that the Tort Claims Act does not render State departments, institutions, or agencies liable for injuries resulting from professional services rendered by doctors, surgeons, dentists, nurses or others employed by State departments, institutions, or agencies which render such services.

Recently, a problem has arisen in the administration of this Act, which deserves the attention of the Legislature. A claimant who had recovered from a negligent employee thereafter sought to recover for the injury from the agency for which the employee worked. The Act does not now make it clear whether a further recovery is permitted under these circumstances. It is the opinion of this office that recovery against a State employee should bar a further recovery against the State. This would place the State in the same position as any other litigant. *PENNIX v GRIFFIN*, 221 N. C. 348. This might be accomplished by the enactment of a statute providing that the recovery of a judgment against a State employee for injuries resulting from his negligence while acting within the scope of his employment amounts to an election of remedies by the plaintiff and bars him from maintaining a claim against the State based upon injuries arising out of the same transaction.

Another matter which should be taken care of by legislation is the rights which the State has against a negligent employee and his insurance carrier once the State has paid a claim based upon injury resulting from this

negligence. We feel that a statute should be enacted providing that in such a case the State is subrogated to the rights of the injured claimant against the negligent State employee and his insurance carrier.

Hearings involving tort claims were conducted in virtually every county in North Carolina and, in most cases, it was necessary for a member of the Staff of this office to appear personally at the hearing. The number of claims presented and the amounts which they involve have steadily increased during the past two years and there seems to be good reason to believe that this increase will continue in the future.

DIVISION OF LEGISLATIVE DRAFTING AND CODIFICATION OF STATUTES

No change was made during the biennium in the permanent duties of this office in rendering assistance to members of the General Assembly and local officials in the drafting of legislation. The 1953 Legislature, however, by Resolution No. 42, made it the responsibility of this Division to advise and cooperate with the Commission on the Revision of the Public School Laws in the amendment, clarification and revision of these laws. This Division is discharging this responsibility and, in addition, the Commission is receiving the benefit of the advice and assistance of Assistant Attorney General Claude L. Love.

One personnel change was made during the biennium. In May, 1953, Charles G. Powell, Jr., resigned as Director of this Division to become Revisor of Statutes. He was succeeded by Max O. Cogburn.

The 1953 Session of the General Assembly made the usual calls upon this office for bill drafting service and approximately 1800 to 2000 bills were drafted for consideration by the Legislature. Some of these bills were local in character, but many of them were important complicated bills which required several redrafts before they were put into final form. The entire staff of the Attorney General's office participates in this bill drafting service.

Recompilation of Volumes I, II, and III of the General Statutes has been completed. Some preliminary consideration has been and is being given to a reworking of the Index and a consequent recompilation of Volume IV. Numerous inaccuracies and deficiencies in the existing Index have become apparent and it is the hope of this office that a new Index may soon be made available.

DIGEST OF OPINIONS TO GOVERNOR

NOTARIES PUBLIC; ISSUANCE OF COMMISSION DATED ON SUNDAY;
DATE OF QUALIFICATION FOR OFFICE

22 July 1952

The issuance of a commission as a notary public which is dated on a Sunday would not invalidate the acts of the notary public to whom the commission was issued. A notary public may not qualify by taking the oath of office prior to the expiration of the current term in which he is serving in such capacity.

EXECUTIVE BUDGET ACT; BUDGET BUREAU; DIRECTOR OF THE BUDGET;
AUTHORITY OF DIRECTOR OF BUDGET TO USE UNAPPROPRIATED MONEY
IN THE GENERAL FUND OF THE STATE TO INCREASE SALARIES OF
STATE EMPLOYEES; STATE PERSONNEL ACT; AUTHORITY TO
ESTABLISH SALARY RANGES AND INTERMEDIATE STEPS;
UNIFORMITY OF SALARIES WITHIN THE SAME CLASSI-
FICATION OR SERIES; CONSTITUTIONAL LAW; STATE
CONSTITUTION; EXPENDITURE OF PUBLIC FUNDS

25 July 1952

The Governor of the State of North Carolina, acting as Ex Officio Director of the Budget, is not authorized to use unappropriated money in the General Fund of the State for the purpose of increasing salaries and wages of State employees as this is prohibited both by the Executive Budget Act of the State and by Article XIV, § 3, of the State Constitution.

The Director of the Budget is authorized to allocate surplus funds of the State Highway and Public Works Commission, but such allocations could not be used to increase the salaries of employees of the Paroles Department, Probation Department and Motor Vehicles Department.

The State Personnel Council and the State Personnel Director are vested with the authority to determine whether salary ranges shall be increased at all, and if so, in what amount; but if this agency grants increases, such increases must be uniform for similar positions in similar classifications and performing substantially the same work and duties.

NOTARIES PUBLIC; REVOCATION OF COMMISSION BY THE GOVERNOR

12 March 1953

The Governor has authority to revoke a commission of a notary public upon complaint of any citizen when he has satisfied himself that the revocation of such commission is in the public interest.

UNIFORM DRIVER'S LICENSE ACT; RESTORATION OF LICENSE BY THE
GOVERNOR UNDER HIS POWER TO PARDON

5 June 1953

The Governor does not have the authority under his pardoning power to restore a driver's license which has been revoked because of the operation of a motor vehicle while under the influence of intoxicating liquor.

PUBLIC OFFICER; SHERIFF; REMOVAL FROM OFFICE;
METHOD OF PROCEDURE

15 June 1953

A sheriff may be removed from office for willful or habitual neglect or refusal to perform the duties of his office, for willful misconduct or maladministration in office, for corruption, for extortion, upon conviction of a felony, or for intoxication, or upon conviction of being intoxicated, upon petition filed by five qualified electors or by the county attorney or the solicitor of the district, as provided in Article 2, Chapter 128, of the General Statutes.

STATE BOUNDARIES; AUTHORITY TO INCREASE SAME

10 July 1953

The territorial limits of the State may not be increased except by an amendment to Article I, § 34, of the Constitution (1868), which provides that the boundaries and limits of the State shall be and remain as they now are.

APPOINTMENT OF SPECIAL PEACE OFFICERS BY THE GOVERNOR;
G. S. 60-83; HIGH POINT MERCHANTS' PATROL, INC.

20 July 1953

Under G. S. 60-83, the Governor is authorized to appoint special officers only upon application of the organizations named in the statute. This statute does not authorize the Governor to appoint special officers upon application of a merchants' patrol which is engaged in the business of furnishing protection to manufacturing plants, businesses and private homes.

MARRIAGE LAWS; MARRIAGE BETWEEN WHITE PERSON AND
JAPANESE NATIONAL

28 July 1953

There is no constitutional nor statutory prohibition against the marriage between a white person and a Japanese National.

CONSTRUCTION OF STREETS AND HIGHWAYS ON PROPERTY OWNED BY STATE
DEPARTMENTS, INSTITUTIONS AND AGENCIES BY THE STATE
HIGHWAY AND PUBLIC WORKS COMMISSION

6 August 1953

There is no legal objection to the construction of streets and roads by the State Highway and Public Works Commission on property owned by State departments, institutions and agencies.

PER DIEM AND EXPENSES OF MEMBERS OF THE CAROLINA-VIRGINIA
TURNPIKE AUTHORITY; CHAPTER 1159, SESSION LAWS OF 1953

28 September 1953

The per diem and expenses of members of the Carolina-Virginia Turnpike Authority may not be paid from State funds.

ZEBULON BAIRD VANCE MEMORIAL COMMISSION; ELECTION OF OFFICERS

28 September 1953

There is no provision in Chapter 1234 of the Session Laws of 1953 for the election of officers of the Zebulon Baird Vance Memorial Commission.

POLL TAX; AGE LIMITATIONS

12 November 1953

G. S. 105-341 limits the imposition of the poll tax to male persons "between the ages of 21 and 50 years".

PERSONNEL DEPARTMENT; ARTICLE 28E OF CHAPTER 106; N. C. MILK
COMMISSION EMPLOYEES; JURISDICTION OF PERSONNEL DEPARTMENT

10 November 1953

The Personnel Department has jurisdiction over the employees of the N. C. Milk Commission. The N. C. Milk Commission is subject to the Executive Budget Act of the State.

DOUBLE OFFICE HOLDING; MEMBER OF BOARD OF DIRECTORS OF
NORTH CAROLINA RURAL REHABILITATION CORPORATION

19 November 1953

A member of the Board of Directors of the North Carolina Rural Rehabilitation Corporation is not a public office within the prohibition of Article XIV, Section 7, of the Constitution.

RAILROAD POLICE; APPOINTMENT OF NONRESIDENT POLICEMEN
BY THE GOVERNOR

29 December 1953

No legal objection is seen to the appointment by the Governor of a non-resident as a special policeman under G. S. 60-83. The statute provides that the company making application for the appointment of such person shall be liable for the wrongful acts of such person while in the exercise of the powers conferred by the statute.

DOUBLE OFFICE HOLDING; COUNTY ATTORNEY NOT A PUBLIC OFFICE

6 January 1954

The position of county attorney is not a public office, and would not fall within the prohibition provided in Article XIV, Section 7, of our Constitution.

PRIVATE DETECTIVES; CARRYING CONCEALED WEAPONS

9 February 1954

A private detective may not carry a weapon concealed about his person to any further extent than a private citizen may carry such a weapon. The fact that a person has a State license to engage in the business of being a private detective would not entitle him to carry a weapon to the same extent and in the same manner as peace officers are authorized to do so.

STATE GRANTS; AUTHENTICATION BY THE GOVERNOR

1 March 1954

The Secretary of State is the State official charged with the investigation and preparation of grants to State lands which are subject to grant under the statute. The Secretary of State is also charged under the statute with the duty of investigating the character of the land, determining its market value, and fixing the price per acre for said land.

The only duty placed on the Governor with respect to issuing of grants is prescribed by G. S. 146-47, which provides that such grants "shall be authenticated by the Governor."

DIGEST OF OPINIONS TO SECRETARY OF STATE

GRANTS; AUTHORITY TO ISSUE GRANT FOR LAND PREVIOUSLY GRANTED

7 October 1953

G. S. 146-50 prohibits the Secretary of State from granting land which he has reason to believe has already been granted.

STATE BOARD OF EDUCATION; TITLE TO LANDS
COVERED BY NAVIGABLE WATERS

7 October 1953

The State Board of Education does not own land under the navigable waters adjacent to Morehead City.

DIGEST OF OPINIONS TO STATE AUDITOR

STATE AUDITOR; USE OF FACSIMILE SIGNATURE MACHINE
ON STATE WARRANTS

9 September 1952

The use of signature writing machines by the State Auditor in approving State warrants would be valid if, in any case, it could be established that this method of signing was authorized by the State Auditor. In view of the possibility of the illegal or unauthorized use of such machine, it is suggested that a bond be given to protect the State Treasurer in such an event, and that the State Auditor furnish the State Treasurer an authorization for the use of such machine and guarantee to protect him against any improper use thereof. No statute expressly authorizes the use of such signature writing machine.

PEACE OFFICERS; BOND REQUIREMENTS

30 December 1953

Peace officers clothed with the power of arrest and in the employ of the State may not be bonded in a maximum amount of more than \$2,500.00. See G. S. 128-9.

DIGEST OF OPINIONS TO STATE TREASURER

AUTHORITY OF CHIEF CLERK OF THE STATE TREASURER

7 December 1953

Under G. S. 147-75, the State Treasurer may authorize his Chief Clerk to perform any duties pertaining to the office, except signing checks, and the Treasurer may authorize the Chief Clerk or Deputy to register, in his name, State bonds entitled to registration.

SCHOOLS; CITY ADMINISTRATIVE UNITS; HOW SCHOOL FUNDS
SHALL BE PAID OUT

14 April 1954

G. S. 115-368(1 and 2) provides that State and local school funds shall be paid out only upon vouchers signed by the chairman and the secretary of a county board of education or the board of trustees of a city administrative unit. No provision is made for a vice chairman, an acting chairman or a temporary chairman of either a county board of education or a city school board. G. S. 115-44, G. S. 115-352, G. S. 115-353. As to the local situation in Lenoir City Administrative Unit, see Chapter 132, Private Laws of 1903 and Chapter 321, Private Laws of 1913.

DIGEST OF OPINIONS TO STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

SCHOOLS; RIGHT OF COUNTY BOARD OF EDUCATION AND COUNTY COMMISSIONERS TO OPERATE A HIGH SCHOOL WITH TAXES PROVIDED ENTIRELY
AT THE COUNTY EXPENSE AND FROM FUNDS OTHER THAN

AD VALOREM TAXES

22 July 1952

Article IX, Section 5, of the State Constitution provides that the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State. G. S. 115-356 provides that "maintenance of plant and fixed charges" shall be

supplied from fines, forfeitures, etc. G. S. 18-57 provides that the net proceeds from the operation of ABC stores shall be paid into the General Fund of the County. These funds may be used as any other general or surplus funds are used.

From all the foregoing it would seem that a county board of education does not have the authority in the absence of a public-local statute providing otherwise to provide for the continuance of high school instruction from fines, forfeitures, etc., at a school that has been consolidated with another school by order of the State Board of Education.

SUPERINTENDENT OF PUBLIC INSTRUCTION; TEXTBOOK CONTRACTS;
AUTHORITY TO MODIFY

5 August 1952

The State Board of Education and the publisher of any textbook may modify any existing contract within the statutory period of time by mutual consent.

SCHOOLS; COUNTY BOARD OF EDUCATION; ELECTION OF CHAIRMAN

29 September 1952

G. S. 115-44 provides that a county board of education shall organize by electing one of its members as chairman for a period of one year or until his successor is elected and qualified. The same section provides that the Superintendent of Public Instruction shall be ex-officio Secretary to the County Board.

SCHOOLS; STATE BOARD OF EDUCATION; LITERARY FUND

14 January 1953

It is doubtful that the term net proceeds as used in Article IX, Section 4, of the State Constitution in reference to the State Literary Fund provided for in G. S. 115-15(a), is broad enough to authorize the expenditure of moneys from the State Literary Fund to have the marshlands of the State surveyed and proper plats thereof made. Express statutory authority for the proposed expenditure at this session of the General Assembly is suggested.

SCHOOLS; ELECTION OF CITY SUPERINTENDENT

23 January 1953

Because of the omission in the fourth paragraph of G. S. 115-353, it is thought that it is not necessary for a city administrative unit to give the fifteen day public notice of intention to elect a city superintendent which is required in the case of a county superintendent.

SCHOOLS; CONSOLIDATION; SPECIAL ACT OF THE GENERAL
ASSEMBLY; CONSTITUTIONALITY

23 February 1953

The General Assembly cannot under the Constitution, Article II, Section 29, pass any special, local or private Act establishing or changing the lines of school districts.

SCHOOLS; AUTHORITY COUNTY SUPERINTENDENT AND COUNTY BOARD
OF EDUCATION TO REJECT TEACHERS

8 May 1953

Under the language of G. S. 115-359 and the decision in BOARD OF EDUCATION v. DICKSON, 235 N. C. 359, it is thought that a teacher already in service may not be dismissed by action of the county superintendent and the county board of education, without action having been taken by the local school committee.

SCHOOLS; CONSTRUCTION OF TEXTBOOK CONTRACT AND GENERAL
CONDITIONS INCORPORATED IN SAID CONTRACT

3 June 1953

It is thought that Section 11 of the General Conditions adopted by the State Board of Education, requiring the successful bidder to furnish textbooks in this State at a price not to exceed that for which the books are furnished or sold in another state, applies to contracts entered into in other states prior to the date of the North Carolina contract for the same textbooks, since the breach consists in *furnishing, selling or placing on sale* the same books at a lower price elsewhere.

SCHOOLS; CONSOLIDATION; CHAPTER 1151 SESSION LAWS OF 1953;
APPLICATION FOR CONSOLIDATION OF SCHOOLS (NEGRO) OF
WASHINGTON COUNTY

12 June 1953

Chapter 1151 of the Session Laws of 1953, dealing with the consolidation of schools, is prospective in operation, except Section 1(d) which has application only to high schools which have been closed on account of having an average daily attendance of less than sixty pupils.

SCHOOLS; COUNTY BOARD OF EDUCATION; QUORUM; VOTE REQUIRED TO
CARRY MOTION; RIGHT OF THE CHAIRMAN TO VOTE

15 July 1953

A Board of Education consisted of seven members, one member resigned and the vacancy has not yet been filled. It is thought that four members are necessary to constitute a quorum for the transaction of business. EDWARDS v. BOARD OF EDUCATION, 235 N. C. 345. At a meeting attended by the six remaining members of the board, two members voted in favor of a motion, one member voted against the motion and the chairman and two other members failed to vote. It is thought that the motion failed to carry. In such case the chairman is entitled to one vote but he is not entitled to two votes, one to make a tie and the other to break the tie. STATE v. LONG, 186 N. C. 516. This situation is to be distinguished from MARKHAM v. SIMPSON, 175 N. C. 135. G. S. 160-12.

SCHOOLS; AUTHORITY OF LOCAL COMMITTEE, COUNTY SUPERINTENDENT AND
COUNTY BOARD OF EDUCATION TO TERMINATE CONTINUING
CONTRACT OF TEACHERS

27 July 1953

From what our Supreme Court said in the case of BOARD OF EDUCATION v. DICKSON, 235 N. C. 359, it is thought that official action must be taken by the local school committee, the county superintendent of schools and the county board of education before the end of the school term; otherwise, the continuing contract of a teacher remains in full force and effect. G. S. 115-354; G. S. 115-359.

SCHOOLS; BUDGET; RESPECTIVE FUNCTIONS OF CITY SCHOOL
BOARD AND TAX LEVYING AUTHORITY

28 July 1953

Under the language of G. S. 115-185, it is thought that G. S. 115-189 is repealed by G. S. 115-363(a), which is a part of the 1939 School Machinery Act. Therefore, the latter statute applies to supplemental school budgets. Under this section, the budget is prepared by the board of trustees of a city administrative unit and submitted to tax levying authorities, which may approve or disapprove any specific item. The budget is then presented to the State Board of Education, which can approve or disapprove as to financial soundness only. It is the duty of the school authorities to prepare the budget and to administer the funds when allowed by the tax levying authorities.

DOUBLE OFFICE HOLDING; MEMBER OF COUNTY ABC BOARD;
MEMBER OF LOCAL SCHOOL COMMITTEE

20 August 1953

Because of the provisions of G. S. 115-131, it is thought that membership on a local school committee or on the board of trustees of a city administrative unit is a public office within the contemplation of Article IX, Section 7, of the State Constitution. Because of the provisions of G. S. 18-41, it is thought that membership on a county or city ABC board is also a public office within the contemplation of that section of the Constitution. When a member of a board of trustees of a city administrative unit qualifies as a member of a city ABC board, he instantly vacates the first office. EDWARDS v. BOARD OF EDUCATION, 235 N. C. 345.

SCHOOLS; FILLING VACANCY ON BOARD OF TRUSTEES OF
FRANKLINTON CITY ADMINISTRATIVE UNIT

20 August 1953

Under the provisions of Chapter 352, Private Laws of 1905, and G. S. 115-352, it is thought that a vacancy on the board of trustees of the Franklinton City Administrative School Unit is filled by appointment of the remaining members of the board.

MOTOR VEHICLES; DRIVER TRAINING PROGRAM IN PUBLIC SCHOOLS;
FORM OF CONTRACT WITH AUTOMOBILE DEALERS FURNISHING
MOTOR VEHICLES FOR USE IN SUCH PROGRAM

25 August 1953

County boards of education are not permitted under our law to take out public liability insurance on automobiles loaned by automobile dealers or manufacturers for the driver training program authorized by Chapter 1196, Session Laws of 1953, but they can take out insurance covering fire, theft and collision damage to the car alone. Cars loaned to county boards of education for driver training programs should be registered in the name of the owner of the car rather than in the name of the board of education to whom such loan was made.

SCHOOLS; RESPONSIBILITY OF LOCAL OFFICIALS FOR PERMITTING SCHOOL
CHILDREN TO ACT AS MEMBERS OF SCHOOL PATROL

4 September 1953

While there seems to be no statutory authority for school officials to appoint students to act as members of a school patrol, it is thought that if the officials act in good faith in the selection of competent students to act in such capacity, the officials would not be personally liable for an

injury sustained by such a pupil while on duty. *BETTS v. JONES*, 203 N. C. 590; *SPRUILL v. DAVENPORT*, 178 N. C. 364.

SCHOOLS; DISTRICT IN WHICH CHILD IS REQUIRED TO ATTEND; RESIDENCE

18 September 1953

G. S. 115-352 provides that school children shall attend school in the district in which they reside unless assigned elsewhere by the State Board of Education. It is thought that the term "residence" as used in that statute and in G. S. 115-213(b) is synonymous with domicile. Therefore, it is thought that when the parents reside temporarily in another district, their children are still entitled to attend school in the district in which the parents are domiciled. *STATE v. GRIZZARD*, 89 N. C. 115.

SCHOOLS; COMPULSORY ATTENDANCE LAW; COUNTY IN WHICH PROSECUTION MUST BE BROUGHT

21 September 1953

When children reside in one county but have been assigned to attend school in an adjoining county, it is thought that it is the duty of the school officials in the county to which the children have been assigned, to take steps for the enforcement of the compulsory attendance law against such parents willfully refusing to cause their children to attend school. However, the prosecution must be in the county in which the children reside. *G. S. 115-352*; *G. S. 115-302*; *STATE v. JOHNSON*, 188 N. C. 591.

SCHOOLS; TEACHERS; LENGTH OF SCHOOL DAY; SOCIAL SECURITY FOR LUNCHROOM EMPLOYEES

22 September 1953

Construing together *G. S. 115-55-56-58*, it is thought that the county board of education in a county administrative unit can fix the time that teachers are required to report for duty in the mornings. *COGGINS v. BOARD OF EDUCATION*, 223 N. C. 763. *G. S. 115-381* provides that school lunchrooms shall be operated on a nonprofit basis. However, reasoning by analogy from the amendments contained in Chapter 985, Session Laws of 1953, it is thought that the employer's part of the social security tax for lunchroom employees is a proper item of operating costs and may be paid from lunchroom funds.

SCHOOLS; LOCAL SCHOOL FUNDS; SEPARATE ACCOUNTS

2 October 1953

Proceeds of a supplemental school tax levied in conformity with the provisions of *G. S. 115-361* should be kept separate from all other school

funds simply as a bookkeeping matter. However, it is thought that it is not necessary to deposit these funds in a separate bank account provided separate code numbers are used to indicate that each particular check is to be charged to these funds. G. S. 115-361-363(a); G. S. 115-165(2)-366-368(2)-368(4)-369(2)-361.

SCHOOLS; CONSOLIDATION OF CITY AND COUNTY ADMINISTRATIVE UNITS;
PROCEDURE IN POLK COUNTY

2 October 1953

G. S. 115-352 sets up the machinery for the consolidation of a city administrative unit with the county unit to which the city unit belongs.

G. S. 115-354 provides for district school committees but makes no provision for a county-wide committee in a case in which the entire county is embraced within one district.

It is thought that if an entire county should be consolidated into one district, special supplemental taxes theretofore voted in a city administrative unit in the county, and in a particular district in the county administrative unit, could no longer be levied and collected because the units upon which the taxes are being levied would have been abolished. However, it is thought that if the city administrative unit is simply consolidated with the county unit and remains an administrative district in that unit, and if the district in the county unit now levying the special tax is not consolidated, the special supplemental taxes in neither the city unit nor the county district would be affected. G. S. 115-361 and G. S. 115-362.

SCHOOLS; USE OF LOCAL SUPPLEMENTAL TAX FUNDS FOR
PURCHASE OF SCHOOL ACTIVITY BUS

8 October 1953

Construing together G. S. 115-361 and G. S. 115-45.1 it is very doubtful that supplemental tax funds levied in conformity with the provisions of G. S. 115-361 can be used for the purchase of a school activity bus.

SCHOOLS; PUBLIC CONTRACTS; G. S. 143-129; SCHOOL BUILDINGS
DESTROYED BY TORNADO

12 October 1953

A contract for the construction or repair of a school building damaged or destroyed by a tornado must be let as provided by G. S. 143-129.

SCHOOLS; CONSTRUCTION OF BUILDINGS UNDER CHAPTER 1046, SESSION LAWS OF 1953; PLANS REQUIRED TO BE APPROVED BY STATE SUPERINTENDENT

23 November 1953

While Section 2(a), Chapter 1046, Session Laws of 1953, contains no definite provision to that effect, as to the \$100,000 allocated to each county under that subsection of the 1953 School Bond Act, it is thought that the provisions of G. S. 115-84 are controlling, and that the plans of buildings to be erected from such funds must be approved by the State Superintendent of Public Instruction.

SCHOOLS; SALE OF ABANDONED SCHOOL PROPERTY; REJECTION OF BIDS; WITHDRAWAL OF PROPERTY FROM SALE

17 February 1954

Since the sale of school property under G. S. 115-86 must be preceded by a finding of fact by the Board of Education to the effect that the property in question is no longer needed for school purposes, it would seem that after such property has been advertised for sale, because of changed conditions, the Board of Education may adopt a subsequent resolution finding as a fact that the property is now needed for school purposes and withdrawing the same from sale.

If a public sale has actually been conducted but not confirmed, it would seem that the Board of Education has authority to reject all bids and adopt a resolution finding as a fact that because of changed conditions, the property is now needed for school purposes and withdrawing the same from sale.

SCHOOLS; EASTERN BAND OF CHEROKEE INDIANS; ATTENDANCE STATUS

22 February 1954

It is thought that a child whose parents are members of the Eastern Band of Cherokee Indians of Western North Carolina is entitled to attend the public schools of North Carolina along with white children, provided such Indian child is qualified as to age, residence, etc. It is also thought that the provisions of G. S. 115-2 and G. S. 115-66, dealing with "Croatan Indians" do not apply. Constitution of North Carolina, Article IX, Section 2.

SCHOOLS; AUTHORITY OF CITY SCHOOL BOARD TO CREATE AN OBLIGATION FOR THE PURCHASE OF PROPERTY TO BE USED AS A SCHOOLHOUSE SITE

9 March 1954

Since there is no statute expressly or by necessary implication authorizing a county or city board of education to convey property by mortgage, it is to be doubted that either a city or a county board of education has the authority to purchase real property and execute a mortgage to secure a balance of the purchase price. VAUGHN v. COMMISSIONERS, 118 N. C. 636.

DIGEST OF OPINIONS TO COMMISSIONER OF AGRICULTURE

AGRICULTURE; DEPARTMENT OF AGRICULTURE; FERTILIZERS; INSPECTION
FEE ON FERTILIZER SHIPPED TO FEDERAL RESERVATION

21 July 1952

Commercial fertilizer shipped by the Sewerage Commission of the City of Milwaukee to the Special Service Officer at Fort Bragg is not subject to the State inspection tax for the reason that the same is shipped to a Federal reservation, exclusive jurisdiction over which has been ceded to the United States.

AGRICULTURE; ANIMAL DISEASES; APPROPRIATION FROM THE CONTINGENCY
AND EMERGENCY FUND TO PROVIDE COMPENSATION FOR
KILLING DISEASED ANIMALS

13 August 1952

The Governor and Council of State has authority to appropriate funds from the Contingency and Emergency Fund to prevent and control animal diseases and indemnify owners where animals have to be slaughtered to prevent the spread of disease. This authority can be exercised when declarations of emergency are made by the United States Secretary of Agriculture, the Director of the Bureau of Animal Industry and the Commissioner of Agriculture of this State.

MARKETING ASSOCIATION ORGANIZED PURSUANT TO G. S. 54-129 ET SEQ.;
DIVIDEND LIMITATION

18 December 1952

A marketing association incorporated pursuant to G. S. 54-129 et seq. is subject to the limitations of G. S. 55-116, which provides, in substance, that no corporation may declare and pay dividends except from the surplus or net profits arising from its business, or when its debts, whether due or not, exceed a designated portion of its assets.

CREDIT UNIONS; USE OF NAME OF SAVINGS AND LOAN INSTITUTION

26 January 1953

The words "A Cooperative Savings and Loan Institution" used by a credit union on its checks do not constitute a violation of the law.

CREDIT UNIONS; LABOR RELATIONS; CONTRACTS

14 May 1953

A credit union has no authority to become a check-off agency as a result of a collective bargaining contract.

DEPARTMENT OF AGRICULTURE; INSPECTION OF PAPERS;
PRODUCTION AND SALE OF DOUGHNUTS

27 May 1953

Cafes and restaurants producing doughnuts and pies and selling the same to their customers for consumption on premises, as well as to customers who carry the same away for consumption, are engaged in conducting a bakery and are subject to the bakery inspection tax.

TAXATION; INSPECTION FEE; COTTONSEED MEAL INSPECTION TAX

28 May 1953

When cottonseed meal is sold to the Commodity Credit Corporation, such meal is not subject to the inspection tax of 25 cents per ton, imposed by G. S. 106-68, because such inspection fee is required to be paid only when cottonseed meal is "sold for use as fertilizer or feed", and a sale to the Commodity Credit Corporation cannot be regarded as a matter of law, as a sale for use as fertilizer or feed.

AGRICULTURE; WEIGHTS AND MEASURES DIVISION; RULES AND
REGULATIONS; WEIGHING TOBACCO

28 July 1953

An administrative officer such as the Superintendent of Weights and Measures cannot create a presumption by regulations as this is the function of the General Assembly. A custodian of articles weighed by a public weighmaster is only liable for the condition of the articles during the interim period. Where a public weighmaster dies, the articles can be re-weighed by the Superintendent of Weights and Measures.

BEER AND WINE; FELONIES INVOLVING MORAL TURPITUDE UNDER G. S. 18-78

27 August 1953

It is thought that a person convicted of a felony involving moral turpitude is disqualified for employment in the sale or distribution of malt beverages and that the conviction need not necessarily be within two years of his employment. It is also thought that the expression "within two years" limits only the offense of violating the prohibition laws.

N. C. MILK COMMISSION; CONSTRUCTION OF CERTAIN SECTIONS
OF THE 1953 ACT

26 August 1953

Under the provisions of the 1953 Act creating the North Carolina Milk-Commission, the Commission has authority to fix minimum, maximum or fixed prices to be paid producers by distributors, and the Commission may issue licenses to distributors who are located outside of established marketing areas.

The Commission also has authority to require distributors to post with the Commission schedule of prices and can require notice of the change in this schedule. The Commission may not, however, restrict the marketing area of any producer but can require a distributor licensed in any marketing area to pay established producer prices, irrespective of the fact that the processing and bottling plant of such distributor is located outside of said area.

AGRICULTURE; PURE FOOD, DRUG AND COSMETIC ACT

27 August 1953

The Department of Agriculture is authorized to prohibit the sale of eggs found to be of a lower quality or grade than that stated on the egg containers, provided qualities and grades have been previously established by the Department under the law.

NORTH CAROLINA MILK COMMISSION; CONSTRUCTION OF CERTAIN
SECTIONS OF THE 1953 ACT

28 August 1953

Under the provisions of the 1953 Act creating the North Carolina Milk Commission, the Commission is required to withdraw from an established marketing area upon the written application of a majority of the individual producers in said marketing area.

The Commission also has authority to revoke a license issued to a producer-distributor, and the rules and regulations of the Commission for any established area are applicable to producers, distributors, and producer-distributors located in other States and supplying to such established marketing area in North Carolina.

AGRICULTURE; FROZEN DESSERTS; ICE CREAM; PRODUCTS
CONTAINING SUBSTITUTE INGREDIENTS

18 September 1953

Under the present laws and regulations of this State frozen desserts and ice cream must be made from dairy products or ingredients, and butterfat or milk fat cannot be replaced by substitutes such as coco fat, cotton seed oil, soya bean oil, peanut oil and animal fats.

AGRICULTURE; WEIGHTS AND MEASURES; CONTRACT CONTRARY
TO STATUTES AND REGULATIONS

15 November 1953

The requirements of the Weights and Measures Statutes as well as the regulations authorized thereunder cannot be invalidated by stipulations placed in order blanks or contracts which are used by vendors in selling their commodities.

MOTOR VEHICLES; EQUIPMENT; DIRECTIONAL SIGNALS

1 December 1953

Directional signals are required only where the vehicle is of a model or series designation, which designation shows that the vehicle was manufactured or assembled after July 1, 1953. The term "series designation" does not refer to the manufacturer's serial number, but refers to some designation by letter or style name which indicates the type or style of the vehicle.

MOTOR VEHICLES; WEIGHT OF VEHICLES AND LOAD; WEIGHTS AND
MEASURES; CALIBRATION; LEGAL MAXIMUM WEIGHTS; TOLERANCE

11 February 1954

The Division of Weights and Measures should calibrate motor vehicles according to the legal maximums of axle weights and overall gross weight and not according to the tolerance weights permitted by the statute.

AGRICULTURE; GARBAGE LAW; DEFINITION OF GARBAGE

27 April 1954

Where an individual feeds swine with a mixture of corn and stale sandwiches collected from cafes and sandwich shops, the materials fall within the definition of garbage as defined by the garbage feeding law, since the same is a putrescible substance which remains or is the result of handling, preparing, cooking and consumption of food.

DIGEST OF
OPINIONS TO COMMISSIONER OF LABOR

DEPARTMENT OF LABOR; NORTH CAROLINA BOILER LAW; MUNICIPAL
ORDINANCES; CONFLICT BETWEEN ORDINANCES OF MUNICIPALITY
AND NORTH CAROLINA BOILER LAW, RULES AND REGULATIONS

3 October 1952

Rules and regulations of the North Carolina State Board of Boiler Rules requiring a certain type of pressure valve on boilers and pressure vessels is superior to and should be followed in its requirements rather than a municipal ordinance which fixes different requirements.

INSURANCE COMPANIES; INVESTMENTS IN REAL ESTATE;
IMPROVEMENTS; PERMANENT FIXTURES

17 March 1954

A grantor conveying real estate to a grantee life insurance company can except machinery and equipment from the operation of the deed of conveyance. The machinery and equipment would remain personal property and the insurance company would never acquire it.

A lessor insurance company and a lessee manufacturer may provide in the lease that all machinery and equipment placed by the lessee in the building or on the premises during the term of the lease be and remain trade fixtures (and not improvements) and be removed by the lessee at the expiration of the lease. Such machinery and equipment is not in the nature of an improvement to the realty but is a trade fixture being used temporarily for the operation of the business.

DIGEST OF
OPINIONS TO COMMISSIONER OF INSURANCE

COMMISSIONER OF PUBLIC TRUST CONTRACTING FOR HIS OWN BENEFIT;
MEMBER OF NORTH CAROLINA INSURANCE ADVISORY BOARD
WRITING INSURANCE FOR THE STATE OF NORTH CAROLINA

1 July 1952

The North Carolina Insurance Advisory Board has no power or authority other than to recommend action to the Commissioner of Insurance with respect to insurance rate schedules and to prescribe rules and regulations relating to public hearings on such matters. Although there is no legal reason why a member of the Insurance Advisory Board should not be permitted to write insurance on State-owned property, it is not deemed advisable to permit this to be done.

INSURANCE CONTRACTS; MEDICAL PAYMENT COVERAGE; CHILD EN VENTRE SA
MERE; DEFINITION OF "PERSON" WITHIN THE TERMS OF
INSURING AGREEMENT

31 July 1952

The word "person" in a medical coverage provision of an automobile liability insurance policy, in the absence of a provision in the policy to the contrary, should be construed to include a viable child *en ventre sa mere*, and where it is established by competent medical evidence that such a child sustained a prenatal injury due to an accident within the terms of the policy, medical coverage should extend to said child.

INSURANCE LAWS; GROUP AND BLANKET ACCIDENT AND HEALTH INSURANCE

4 August 1952

Where a group accident and health insurance policy is converted into a blanket accident and health insurance policy, the eighteen-year-old age restriction appearing in G. S. 58-254.3, the blanket accident and health insurance statute, would be applicable to such converted policy.

INSURANCE LAWS; LOSS PAYABLE CLAUSE IN INSURANCE POLICY;
MORTGAGEE'S INTEREST DERIVATIVE

3 October 1952

In an open or simple loss payable clause of an insurance policy, the rights of the mortgagee are wholly derivative and wholly dependent upon the validity of the policy in the hands of the insured.

INSURANCE LAWS; POLICIES CONTAINING TWENTIETH ANNIVERSARY
DIVIDEND PROVISIONS; TONTINE INSURANCE; WAGERING CONTRACTS

19 November 1952

With certain exceptions set out in G. S. 58-201.2, no policy of life insurance shall be issued or delivered in this State unless it shall contain, in substance, nonforfeiture provisions, or paid-up nonforfeiture benefits set forth in this section.

Under G. S. 58-195, all life insurance companies are required to distinctly state the amount of benefits payable in policies issued by them. These policies are also required to state the manner of payment, the consideration therefor, and contain such other provisions as the Commissioner may require.

A policy of insurance which contains a wagering contract is void as against public policy.

Tontine insurance has been described as a species of hazard in which the strong and the rich have the greater chance of winning although they pay no more for it. The poor, the weak, and the most unfortunate are almost sure to lose.

BANKERS LIFE AND CASUALTY COMPANY; APPLICATION FOR ADMISSION;
REAL ESTATE OWNED WHICH IS UNDER "CONTRACT OF SALE"

28 November 1952

Investments in "contracts of real estate" by insurance companies doing business in North Carolina should be construed by the Department as "real estate held" as provided by G. S. 58-79(k).

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT; ASSIGNED RISK
PLAN; CHANGE OF VEHICLES

28 November 1952

When a company issues a policy of automobile liability insurance pursuant to the assigned risk plan, the liability of the company is determined by the terms of the policy, there being nothing in the Financial Responsibility Act which imposes further liability. If the policy provides that the company will be liable only when the insured is driving a described motor vehicle, it does not cover an accident occurring while the insured is driving a different vehicle.

Under the Financial Responsibility Act a person whose driver's license has been suspended or revoked may not obtain a reissuance of his license until he files proof of financial responsibility. He may do this by filing proof that he has a liability insurance policy as defined by the statute. If he does not own an automobile it is sufficient for this purpose that the policy cover the named insured against liability arising out of his use of any motor vehicle not owned by him. If he is the owner of a motor vehicle it is sufficient that the policy cover liability arising out of his use of the automobiles owned by him, each of which must be designated by motor number in the policy. If such person thereafter acquires a motor vehicle, or another motor vehicle, and does not file a policy covering liability for use of that vehicle, his driver's license may be suspended by the Department of Motor Vehicles, it being his duty to maintain proof of financial responsibility for two years. However, the right of the Department to suspend his license does not have any bearing upon the liability of the insurance carrier under the original policy.

HOSPITAL AND MEDICAL SERVICE CORPORATIONS; INVESTMENT OF SECURITIES

9 December 1952

Hospital and medical service corporations organized under Chapter 57 of the General Statutes may invest their assets in all such securities which life insurance companies, banks, trust companies, executors, administrators and guardians are permitted by law to invest.

VOLUNTEER FIREMEN; EXEMPTION FROM JURY DUTY

12 December 1952

Except in Halifax and Beaufort Counties, volunteer firemen are not exempt from jury duty.

INSURANCE; HAIL INSURANCE; MANNER OF PAYMENT OF
PREMIUMS; DISCRIMINATION

11 March 1953

In view of the language of G. S. 58-44.3 and G. S. 58-44.5, it is unlawful for any insurer or employer, agent or broker of any insurance company to accept as payment of the premium on a policy of insurance anything other than cash or interest-bearing notes at prevailing rates in effect at the time of the signing of the notes.

If premium notes are accepted without interest from one customer and cash or premium interest-bearing notes are accepted from other customers, there would be a clear discrimination which is prohibited by G. S. 58-44.5, and such action would, in fact, be an "abatement, credit, or reduction of the premium named in a policy of insurance."

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY; ASSIGNED RISK;
TAXICAB OPERATORS

10 April 1953

The authority of the Commissioner of Insurance to assign a risk is limited to a motor vehicle liability insurance policy issued to one whose driver's license has been suspended or revoked. He may not assign the risk of the person in the business of operating a taxicab whose driver's license has not been suspended or revoked.

Should G. S. 58-246(d) be amended so as no longer to confer upon the North Carolina Automobile Rate Administrative Office authority to fix rates for liability insurance for operators of taxicabs, the Commissioner of Insurance, when assigning the risk of a taxicab operator whose driver's license has been suspended or revoked, may fix the rate of such policy or authorize the North Carolina Automobile Rate Administrative Office to do so.

BUILDING AND LOAN ASSOCIATIONS; AMENDMENTS TO
CERTIFICATES OF INCORPORATION

18 June 1953

The article on building and loan associations provides no method whereby an association may be continued in existence when its charter has expired through an inadvertent failure to amend the charter continuing its existence. In such cases, the provisions of G. S. 55-32 are for application, and an amendment to the charter has the effect of extending the period of its corporate existence so as to keep the association alive after the expiration of the period of corporate existence set forth in its original charter.

INSURANCE LAWS; AUTOMOBILE DEALERS; DEALER PAYING
PREMIUM ON INSURANCE POLICY

29 December 1953

It would not be violative of the law for an automobile dealer to furnish a customer the necessary funds to purchase a policy of insurance covering an automobile sold by the dealer to such customer.

INSURANCE LAWS; AUTHORITY OF HOSPITAL AND MEDICAL SERVICE
CORPORATION TO INVEST FUNDS IN A BUSINESS CORPORATION
ORGANIZED TO ENGAGE IN GENERAL INSURANCE BUSINESS

2 April 1954

A hospital service corporation organized under Chapter 57 of the General Statutes is permitted to invest its funds in a business corporation organized under Chapter 55 of the General Statutes. A hospital medical service corporation may not invest its funds in a nonstock, nonprofit corporation organized under Chapter 55 of the General Statutes.

DIGEST OF
OPINIONS TO ADJUTANT GENERAL

PUBLIC CONTRACTS; REQUIREMENT OF SEPARATE AND INDEPENDENT BIDDING
FOR SEVERAL CLASSES OF WORK; SPECIFICATIONS FOR PUBLIC
CONTRACTS; AWARDING OF BIDS

2 October 1952

Specifications for public contracts must be prepared so as to permit bidders to submit bids on each of the four categories of work set forth in G. S. 143-128. Contracts must be awarded separately to each of the four categories of work set forth in the statute.

AUTHORITY OF THE ARMORY COMMISSION TO EXPEND ARMORY COMMISSION
FUNDS FOR THE SUPERVISION OF CONSTRUCTION AND MAINTENANCE
OF ARMORIES AND OTHER NATIONAL GUARD FACILITIES

14 December 1953

G. S. 143-233 is sufficiently broad to authorize the employment of a qualified engineer to assist in the necessary engineering supervision of the construction and maintenance of National Guard armories and other facilities, and Armory Commission funds may be expended for this purpose.

DIGEST OF OPINIONS TO STATE BOARD OF ALCOHOLIC CONTROL

ABC BOARD; POWER TO MAKE RULES AND REGULATIONS; VALIDITY OF REGULATION 13

23 July 1952

It is a fundamental rule of administrative law that the Legislature cannot surrender its law-making power, but it may delegate to administrative boards the power and authority to pass reasonable rules and regulations within well defined limitations set out in the statutes. These rules and regulations when passed in strict conformity to and within the limits of the powers delegated to the administrative board, have the same force and effect as statutes.

G. S. 18-78 and G. S. 18-138 each set forth definite limits upon the power of the Board of Alcoholic Control to make regulations.

It is thought that Rule No. 13 adopted by said board is valid and comes within the limitations prescribed by said statutes. Said regulation was passed for the purpose of complying with and clarifying G. S. 18-69.1.

BEER AND WINE; AUTHORITY OF ABC BOARD TO DECLINE TO ISSUE LICENSE FOR PREMISES WITHIN SIX MONTHS AFTER REVOCATION

12 September 1952

Although the first paragraph of G. S. 18-78 does not specifically mention the State Board of Alcoholic Control, it is thought that it is unlawful for said board to issue a license for the same premises to any person for a term of six months after the revocation of a beer license by said board. This view is strengthened by the fact that Section 14, Chapter 974, Session Laws of 1949, substituted "State Board of Alcoholic Control" for "Commissioner of Revenue" in the second paragraph of G. S. 18-78 and rewrote the paragraph.

BEER AND WINE; OFFENSES INVOLVING MORAL TURPITUDE UNDER G. S. 18-78

17 September 1952

G. S. 18-78 authorizes the revocation of a beer permit if a licensee knowingly employs in his place of business a person who has been convicted of a felony involving moral turpitude. The offense of occupying a hotel bedroom for immoral purposes is a misdemeanor only. Therefore, it would seem that a person who has been convicted of such an offense is not disqualified for employment under G. S. 18-78.

BEER AND WINE; CRIMINAL PROCEDURE; EFFECT OF
PLEA OF NOLO CONTENDERE

13 October 1952

In the light of the decision in *STATE v. THOMAS*, 236 N. C. 196, it is thought that in a case in which a person holding a beer permit pleads nolo contendere to a charge of violating the prohibition laws, and a sentence is imposed thereon, such proceeding does not amount to "a judgment of a court convicting a licensee of a violation of the prohibition laws" within the contemplation of G. S. 18-78. It is also thought that a plea of nolo contendere to an indictment charging felony involving moral turpitude would not amount to a conviction "of a felony involving moral turpitude" within the contemplation of the said statute.

BEER AND WINE; AUTHORITY OF ABC BOARD AND COUNTY COMMISSIONERS
TO DECLINE TO ISSUE BEER PERMIT

24 October 1952

Under G. S. 18-76, 18-77, 18-78 and 18-78.1, the Board of County Commissioners is authorized to conduct a hearing before granting a beer license and to refuse to issue the license for good cause shown in compliance with the statutes. G. S. 18-130 requires retailers of beer to file written application for a permit with the State Board of Alcoholic Control. Construing together the various statutes it would seem that each board has the authority to pass upon the application before it and that either board may act independently of the other. In the ordinary situation it is perhaps better for the county commissioners to pass upon the application first because under ordinary circumstances that board is in better position to make a careful investigation of all the facts.

BEER AND WINE; ELECTION WITHIN SIXTY DAYS OF ANOTHER ELECTION

13 January 1953

Since there seems to be no statutory provision for calling a primary election in the City of Concord, it is doubtful that such an election held within sixty days of a county-wide beer and wine election can have the effect of nullifying the result of said beer and wine election. G. S. 18-124(f). *FERGUSON v. RIDDLE*, 233 N. C. 54.

BEER AND WINE; BEER PERMIT FOR OUTLET LOCATED OUTSIDE CITY LIMITS
BUT WITHIN PROHIBITED DISTANCE FROM CHURCH OR SCHOOL

24 June 1953

Under the prohibitions contained in G. S. 18-76 and 18-77, it is thought that an applicant is not entitled to a beer permit to sell at an outlet located

just outside the limits of an incorporated town and within 150 feet of a school building and within 300 feet of a church located just across the line within the city limits.

BEER AND WINE; HOURS OF SALE; AUTHORITY OF STATE ABC BOARD
TO REGULATE CLOSING HOURS

9 October 1953

Although there is an apparent conflict in language between G. S. 18-105 enacted in 1943 and G. S. 18-109(7) (c) enacted in 1947, it is thought that the latter statute is controlling and that the State ABC Board has the authority to fix the closing hours of establishments selling wine at 11 P.M., instead of 11:30 P.M.

DIGEST OF
OPINIONS TO COMMISSIONER OF BANKS

BANKS AND BANKING; PROOF OF CLAIM; PAYMENT; ASSIGNMENT

22 July 1952

The liquidating agent of an insolvent bank does not have to recognize an assignment of a claim unless he approves it and transfers it on the records of the bank. The banking law provides for a procedure to contest claims, and any person who does not contest a claim according to this procedure within the time limitations therein prescribed cannot raise the question of the validity of a claim after the affairs of the insolvent bank have been wound up and completed, and last of all, if there is any possible claim in this matter that could have been asserted after the completion of the liquidation, the right on the claim accrued more than ten years ago and the same is now barred by the ten-year statute of limitations.

BANKS; LOAN LIMITATION; PUBLIC HOUSING ADMINISTRATION
SHORT-TERM NOTICE

7 August 1952

The purchase of Local Housing Authority temporary notes by banks is subject to the investment limitations of G. S. 53-46.

INDUSTRIAL BANKS; AUTHORITY TO ACCEPT TREASURY TAX
AND LOAN DEPOSITS

15 October 1952

Industrial banks which have been authorized to accept commercial checking accounts may accept and convey Federal Treasury tax and loan deposits.

BANKS; LIMITATION OF LOANS; GUARANTEE OF MORTGAGE NOTES

22 May 1953

An unconditional guarantee of mortgage loans is an indirect liability to a bank, coming within the limitations of G. S. 53-48.

BANKS; WHAT CONSTITUTES CONDUCTING A BANKING BUSINESS;
BUSINESS OF CASHING CHECKS

26 May 1953

A bank is defined by statute, G. S. 53-1, to mean a corporation other than a building and loan association, industrial bank and credit union, receiving, soliciting, or accepting money or its equivalent on deposit, as a business. A person engaged in the business of cashing checks for a consideration, but who does not receive any deposits, is not engaged in the banking business.

BANKS; HOLDING REAL ESTATE OTHER THAN PROPERTY USED FOR BANKS

7 October 1953

Property purchased by banks for use for its banking business cannot be held lawfully after it is determined that the same will not be used for this purpose, and should be disposed of within a reasonable time after such conclusion is reached. The Commissioner of Banks has authority to require that this be done. See G. S. 53-43(3)(a). Subsection (c) of this section does not relate to property acquired in this way.

DIGEST OF
OPINIONS TO BUDGET BUREAU

EXECUTIVE BUDGET ACT; COMMISSIONER OF PAROLES; ADDITIONAL APPROPRIATION FOR EMPLOYING ADDITIONAL PERSONNEL IN PAROLE DEPARTMENT

28 July 1952

Under the Executive Budget Act, there is no authority of law to appropriate additional funds for increased personnel for the Parole Department

outside of the funds already appropriated by the General Assembly for the biennial period. Such an item does not meet the requirements required for the use of monies from the Contingency and Emergency Fund.

SALE OF LANDS BY THE STATE; STATE INSTITUTIONS; EMPLOYMENT OF
REAL ESTATE AGENTS, ETC.

30 December 1952

A State institution may employ a real estate agent for the purpose of obtaining responsible bidders for property which it desires to be sold and pay a commission to such agent for such services. *MORTGAGE CO. v. WINSTON-SALEM*, 216 N. C. 726.

APPROPRIATIONS ACT OF 1953; RETROACTIVE PAY INCREASE; EMPLOYEES
ENGAGED IN REPAIRING, ALTERING OR RENOVATING STATE BUILDINGS

3 July 1953

Employees engaged in force-account construction, repairing, and alterations of buildings of State institutions whose length of employment may be reasonably ascertained and whose source of payment is appropriations from the permanent improvement fund, and who are not paid from the general fund, are not entitled to the retroactive pay increase provided by the General Assembly of 1953.

STATE ART SOCIETY; RESPONSIBILITY OF THE BUDGET BUREAU AS TO APPROPRIATIONS MADE BY THE GENERAL ASSEMBLY TO THE STATE ART SOCIETY

30 July 1953

Funds appropriated to the State Art Society by the General Assembly are made subject to the provisions of the Executive Budget Act.

TORT CLAIMS AGAINST STATE INSTITUTIONS; LIABILITY OF THE STATE FOR
THE NEGLIGENCE OF MILITARY PERSONNEL ASSIGNED TO ROTC
UNITS AT STATE INSTITUTIONS

30 October 1953

It is the opinion of this office that the State of North Carolina is not liable for personal or property injury arising out of the negligent operation of government vehicles by military personnel where the personnel in question are regular or reserve members of the armed forces of the United States or National Guardsmen.

TRANSFER OF FUNDS BETWEEN THE UNIVERSITY OF NORTH CAROLINA—
DIVISION OF HEALTH AFFAIRS AND NORTH CAROLINA MEMORIAL HOSPITAL

30 December 1953

The Director of the Budget is authorized, upon application of the head of any department, bureau or agency of the State, to transfer funds appropriated to such department, bureau or agency and included within their budget.

The Director of the Budget is authorized, upon application of the head of the University of North Carolina, to transfer funds from the Division of Health Affairs to the Memorial Hospital.

BOARD OF NURSE REGISTRATION AND NURSING EDUCATION; AUTHORITY TO
CHARGE ACCREDITATION FEE AGAINST STATE PUBLIC SCHOOLS

23 June 1954

There is no authority of law which requires a public school to pay an accreditation fee to the nursing board because of the fact that practical nurse training is given in such school.

DIGEST OF
OPINIONS TO STATE COMMISSION FOR
THE BLIND

STATE COMMISSION FOR THE BLIND; CHAPTER 882 OF THE SESSION LAWS OF
1953 (S. B. 98) ACCESS TO PUBLIC RECORDS

10 July 1953

S. B. 98 (Chapter 882 of the Session Laws of 1953) is not applicable to the State Commission for the Blind, and such Commission is not required to file names of recipients and amounts paid to them.

DIGEST OF
OPINIONS TO STATE BOARD
OF EDUCATION

SCHOOLS; MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT OF 1953;
TORT CLAIMS ACT OF 1951

22 January 1954

It is thought that an order of the State Board of Education allocating the sum of \$100,000 for the purpose of securing the payment of any judgments rendered against the State Board of Education for damages arising

out of accidents in the operation by its employees of motor vehicles as required by the Tort Claims Act, Article 31, Chapter 143 of the General Statutes is a substantial compliance with the requirements of the Motor Vehicle Safety Financial Responsibility Act of 1953, now codified as Article 9(a), Chapter 20 of the General Statutes.

DIGEST OF OPINIONS TO STATE BOARD OF ELECTIONS

ELECTIONS; REGISTRATION; QUALIFICATION OF VOTERS; DATE WHEN A
PERSON ATTAINS THE AGE OF 21 YEARS

30 October 1952

A person is 21 years of age on the first moment of the day preceding the 21st anniversary of his birth. The law does not take into account a fraction of a day. STATE v. MASON, 66 N. C. 636.

DIGEST OF OPINIONS TO STATE BOARD OF HEALTH

PUBLIC HEALTH; VITAL STATISTICS; REGISTRATION OF BIRTH CERTIFICATE
OF CHILD BORN WHEN MOTHER AND FATHER ARE SEPARATED;
LEGITIMACY; PRESUMPTION OF

1 July 1952

Where a child is born in wedlock, even though its parents are separated, it is presumed to be legitimate until the contrary is established by a court of competent jurisdiction. Under such circumstances, the birth certificate should show the husband of the mother as the father of the child.

PUBLIC HEALTH; VITAL STATISTICS; DELAYED BIRTH CERTIFICATE; AMEND-
MENT OF DELAYED BIRTH CERTIFICATE FOR PURPOSE OF
CHANGING NAME OF CHILD

22 July 1952

A delayed birth certificate is approved by the Bureau of Vital Statistics, and the original certificate is recorded with the Bureau of Vital Statistics, and the duplicate sent to the register of deeds for his records. Any

changes made in these records must be made by the Bureau of Vital Statistics, and not by the register of deeds.

DEAD BODIES; DISPOSITION OF

22 July 1952

Next-of-kin of a deceased infant may grant permission to doctor to preserve such body for medical study.

PUBLIC HEALTH; PREVENTION OF TUBERCULOSIS; INDICTMENT AND COMMITMENT OF NONRESIDENT TO PRISON DIVISION OF STATE SANATORIUM

5 August 1952

A person can be convicted of violating our laws for the prevention of tuberculosis and committed to the Prison Division of the State Sanatorium regardless of the fact that such person is a nonresident.

SALE OF BEDDING; INTERSTATE COMMERCE; BEDDING STAMPS

7 August 1952

G. S. 130-270 prohibiting the sale of a mattress unless a tag bearing certain information is sewed to the mattress, applies to a sale by an Indiana manufacturer pursuant to an order solicited in North Carolina and followed by shipment to the purchaser in North Carolina for use in this state.

PUBLIC HEALTH; SMALLPOX, DIPHTHERIA AND WHOOPING COUGH; COMPULSORY IMMUNIZATION; EXEMPTION OF CHILDREN WHOSE PARENTS ARE BONA FIDE MEMBERS OF RELIGIOUS ORGANIZATIONS

2 September 1952

The compulsory immunization laws relating to smallpox, diphtheria and whooping cough exempt children of parents who are members of a recognized religious organization whose teachings are contrary to the practices of compulsory immunization. The children of a person who has conscientious objections to such a form of immunization because of religious convictions but who does not belong to any recognized church whose teachings are contrary to this practice are not exempt from compulsory immunization.

PUBLIC HEALTH; COUNTY FISCAL CONTROL ACT; EXPENDITURE OF
PUBLIC HEALTH FUNDS BY LOCAL HEALTH UNIT

26 May 1953

Local health departments should not have separate bank accounts, but under the County Fiscal Control Act their funds should remain in the county treasury, subject to the checks or drafts initialed by such units. This is also true as to city-county health departments, unless the act under which they are organized provides for a separate statutory financial system.

STATE BOARD OF HEALTH; VITAL STATISTICS; REGISTERS OF DEEDS;
DISCLOSURE OF VITAL STATISTICS RECORDS

17 July 1953

It is doubtful if the secrecy provisions affecting Vital Statistics records in the State Office apply to records kept by registers of deeds, but at the present time no definite opinion is given.

STATE BUILDING CODE COUNCIL; N. C. BOARD OF HEALTH; PLUMBING CODE

20 July 1953

The proposed revision of the Plumbing Code, which is a part of the new revised Building Code, contains requirements more rigid, exacting and stringent, because it includes one and two-family dwellings, which under the Building Code of 1936 were exempt.

PUBLIC HEALTH; VACCINATION OF DOGS; RIGHT OF OWNER TO VACCINATE
HIS OWN DOG; INSPECTION OF POULTRY BY STAMP AUTHORIZED
BY BOARD OF COUNTY COMMISSIONERS

27 May 1954

Under the provisions of the rabies law of North Carolina only duly appointed rabies inspectors or veterinarians can vaccinate dogs against rabies; a dog owner does not have the right to buy vaccine and vaccinate his own dog, and such a procedure would not be a legal vaccination.

No authority has been found which authorizes a board of county commissioners to grant permission to a commercial poultry plant to use a stamp which states "Inspected for Wholesomeness and Sanitation under Supervision of county health department."

There does not exist any statutory authority which would permit commercial poultry plants to be inspected for wholesomeness under the supervision of a county health department or to adopt rules and regulations for such an inspection which would be conducted upon a voluntary basis.

DIGEST OF OPINIONS TO EMPLOYMENT SECURITY COMMISSION

DOUBLE OFFICE HOLDING; BUSINESS MANAGER OF THE EMPLOYMENT SECURITY
COMMISSION; MEMBERS OF THE CIVIL SERVICE COMMISSION
OF THE CITY OF RALEIGH

28 May 1953

No question of double office holding is involved as between the position of Business Manager of the Employment Security Commission and a member of the Civil Service Commission of the City of Raleigh, since the Business Manager of the Employment Security Commission is an employee and is not a public officer.

EMPLOYMENT SECURITY COMMISSION; TRANSFER OF RESERVE ACCOUNTS;
NOTICE OF COMMISSION TO SUCCESSOR EMPLOYER; REFUNDS

15 September 1953

Under G. S. 96-10(e) the Employment Security Commission is authorized to make cash refunds to a successor employer who was not advised by the Commission that he had a right to have his predecessor's reserve account transferred, and where the transfer of the reserve account resulted in a lower rate to such successor employer.

EMPLOYMENT; EXEMPTION OF HAYWOOD COUNTY COMMITTEE ON
EMPLOYMENT OF THE PHYSICALLY HANDICAPPED UNDER
G. S. 96-8(g) (7) (H)

27 April 1954

The Haywood County Committee on the Employment of the Physically Handicapped is a charitable joint venture to provide some income to unfortunate individuals suffering from serious physical handicaps and who cannot compete with normal persons in the regular labor field; such individuals probably occupy the status of partners or joint venturers, and, if not, they probably come within the exemptions of the Employment Security Law which exempts charitable employment.

DIGEST OF OPINIONS TO THE GREATER UNIVERSITY

EDUCATIONAL ADVANTAGES FOR CHILDREN OF WORLD WAR VETERANS;
FREE ROOM AND BOARD

18 August 1952

Under G. S. 116-150, scholarship holders may be furnished a reasonable board allowance in an amount to be determined by the University. The

statute contemplates that if rooms are available to scholarship holders, they should be required to utilize the same, and, under such circumstances, a room allowance in lieu of a room should not be furnished.

SALES TAX; EXEMPTIONS; COLLEGE SORORITY FOUNDATION

10 October 1952

A college sorority organization is not exempt from the payment of sales tax on furniture, fixtures and equipment purchased for use in a sorority house.

SALES TAX; UNIVERSITY OF NORTH CAROLINA; HOSPITAL CAFETERIAS

4 November 1952

Sales of meals in the University of North Carolina Hospital Cafeteria to visitors, physicians, student nurses, interns, residents, medical students and other students are subject to the North Carolina sales tax.

MARRIAGE LAWS; EXAMINATION REQUIREMENTS

26 March 1953

The degree of severity of epilepsy has no bearing on the question of whether the applicant is subject to epileptic attacks. The physician's certificate is required to contain a statement that the applicant was found to be not subject to epileptic attacks.

INSURANCE LAWS; AUTHORITY OF STATE COLLEGE TO SOLICIT AND COLLECT PREMIUMS ON ACCIDENT INSURANCE POLICIES

15 May 1953

There is no authority on the part of State College or its authorities to solicit insurance from students and collect the premiums thereon.

STREET ASSESSMENTS; STATE COLLEGE

2 June 1953

The question of whether or not a public official has authority to waive the Statute of Limitations in a case involving expenditure of public funds is one about which I am unable to authoritatively advise you since our Supreme Court has apparently not passed upon this question. It is seriously doubted, however, if the Trustees of the University have authority to waive the Statute of Limitations which has already run on past-due street assessments.

ESCHEATS; UNPAID SALARIES AND WAGES; STATUTE OF LIMITATIONS

13 August 1953

The fact that a claim for salaries and wages may not be declared after three years by employees would not necessarily bar the enforcement of the escheat of such claims after five years, as provided in G. S. 116-23.

CHAPTER 1205, SESSION LAWS OF 1953; CONSTITUTIONALITY OF EXEMPTION
OF FUNDS HELD BY ASSOCIATIONS ENGAGED IN THE MARKETING
OF SINGLE AGRICULTURAL PRODUCT

13 August 1953

The provisions of the Constitution with respect to escheats are not self-executing. Acts of the General Assembly are required to declare what are escheats and the method of enforcement of them. It is doubtful that an executive or administrative officer can raise the question of the constitutionality of the exemption of associations engaged in marketing of a single agricultural product in the escheats provisions of Chapter 1205, Session Laws of 1953.

UNIVERSITY OF NORTH CAROLINA; ADMISSION
REQUIREMENTS OR STANDARDS

27 October 1953

The statutes do not prescribe standards or admission requirements for persons seeking to be admitted to the University of North Carolina but G. S. 116-10 authorizes the University trustees to make such rules and regulations for the management of the University as they may deem necessary and expedient.

TORTS; UNIVERSITY OF NORTH CAROLINA; DAMAGE CAUSED TO
STUDENT LUGGAGE BY LEAKING WATER PIPE

12 April 1954

The University of North Carolina cannot voluntarily pay for damages caused when a water pipe developed a leak and escaping water caused damage to luggage stored in a storage room. The injured parties should, if they wish to recover, file claim against the University under the provisions of the Tort Claims Act, Article 31 of Chapter 143 of the General Statutes of North Carolina.

DIGEST OF OPINIONS TO STATE HIGHWAY AND PUBLIC WORKS COMMISSION

SENTENCE OF FEMALE UNDER 18 YEARS OF AGE IN FELONY CASES

24 September 1952

The Superior Court can sentence a female under 18 years of age to the State's Prison at Raleigh in cases in which such female has been convicted of a felony, but such person cannot be sentenced to be assigned to work under the supervision of the State Highway and Public Works Commission under G. S. 148-27.

CRIMINAL PROCEDURE; DETAINERS; AUTHORITY OF CLERKS OF THE SUPERIOR COURT TO ISSUE DETAINERS

31 October 1952

A clerk of the Superior Court does not have authority to issue detainers as authorized by G. S. 15-10.1.

PROVISION IN ENCROACHMENT CONTRACT WITH RAILROAD AGREEING TO INDEMNIFY AGAINST DAMAGES; LEGALITY

7 May 1953

State officials do not have a right to enter into contract with railroad companies to save them harmless from consequences for loss of life, personal injury, or property loss or damage which may be caused by or result from or arise by reason of, in connection with, or incident to the improvement and maintenance of the road or highway on railroad rights of way. Such contract is beyond the authority of State officials and might impose only personal liability on the official signing same.

RETROACTIVE INCREASE; COMPENSATION; STATE EMPLOYEES; CHAPTER 1165; SESSION LAWS OF 1953

15 June 1953

The phrase "full time permanently employed" as used in Section 21 of Chapter 1165 of the Session Laws of 1953, providing for retroactive pay for State employees, means those employees who have been regularly employed and who have worked for the State as their principal employment to the exclusion of another employment that would take a substantial part of their time. The fact that such employees are carried on the records of the employing agency as temporary employees would not in itself determine

their status under the language of this Act. The fact that the employees are paid on an hourly, daily, weekly, or monthly basis would not determine whether they came within the provisions of the Act. The employing agency must determine as a factual matter whether or not an employee was regularly employed and gave all time to the work for which he was employed, to the exclusion of any other substantial employment. The employing agency might be justified in considering that a person would not be regularly employed unless he worked for a substantial period of time continuously prior to the ratification of the Act. The employee must be on the payroll at the time of the ratification of the Act to be entitled to the compensation therein provided or on permissive leave without pay or retired under the provisions of the State Retirement Act.

PRISON DEPARTMENT; APPOINTMENT OF FUGITIVE OFFICERS

19 October 1953

G. S. 148-4 authorizes the appointment of fugitive officers for the Prison Department. Upon being commissioned by the Governor, these officers are clothed with the power of arrest for the purpose of apprehending and returning escaped prisoners and fugitives.

PRISONS; CONVICTS; CRIMINAL PROSECUTIONS FOR OFFENSE COMMITTED BY CONVICTS; RIOTS AND INSURRECTIONS; KIDNAPPING

18 March 1954

Convicts confined in a State road camp or penitentiary are subject to criminal prosecution for violations of the criminal laws committed before their imprisonment and subsequent to their imprisonment. A seizure of guards or other persons and holding them as hostages and moving them from place to place in an effort to enforce demands of convicts in our opinion is a violation of the Kidnapping Statute, and those who aid and abet can be indicted and prosecuted for engaging in conspiracies as accessories.

OWNERSHIP OF RAILROAD OVERPASS BY HIGHWAY COMMISSION

1 April 1954

When a railroad company constructs a highway bridge over its tracks, it is doubtful that a conveyance of the bridge to the State by the railroad gives the State any rights which it did not already have.

DIGEST OF OPINIONS TO HOSPITALS BOARD OF CONTROL

HOSPITALS BOARD OF CONTROL; LEGAL SETTLEMENT OF WIFE AND HUSBAND

26 May 1953

A person who moves to this State while mentally disordered or while under commitment to a mental hospital in another State cannot acquire a legal settlement in this State and cannot be committed to the mental institutions in this State.

NORTH CAROLINA MEDICAL CARE COMMISSION; LOANS TO MEDICAL STUDENTS
AND STUDENT NURSES SPECIALIZING IN PSYCHIATRY; ELIGIBILITY

24 July 1953

Chapter 1222 of the Session Laws of 1953 authorizes the Medical Care Commission to make loans to medical students and student nurses who will specialize in psychiatry after graduation and the receiving of degrees and who agree while students to assist the State in psychiatric work in one of the State mental hospitals.

HOSPITALS BOARD OF CONTROL; FEEBLE-MINDED PERSON 15 YEARS OF AGE;
ELIGIBILITY FOR ADMISSION TO CASWELL TRAINING SCHOOL

23 March 1954

Where a feeble-minded boy under 21 years of age was born in Tennessee of Tennessee parents and his mother moves to North Carolina and marries again, the settlement of this boy would follow, and he would have the settlement of his mother.

DIGEST OF OPINIONS TO INDUSTRIAL COMMISSION

WORKMEN'S COMPENSATION ACT; MILITARY PERSONNEL EMPLOYED IN OPEN
MESSES OF U. S. MILITARY RESERVATIONS—CIVILIAN PERSONNEL
EMPLOYED ON U. S. GOVERNMENT MILITARY RESERVATIONS

8 December 1953

The North Carolina Workmen's Compensation Act is not applicable to military personnel employed in open messes by the United States Govern-

ment on military reservations. Civilian personnel employed by the United States Government on military reservations are not subject to the North Carolina Workmen's Compensation Act.

DIGEST OF OPINIONS TO DEPARTMENT OF CONSERVATION AND DEVELOPMENT

CRIMINAL LAW; LANDLORD AND TENANT; AMENABILITY OF LANDLORD OR
EMPLOYER TO INDICTMENT FOR INSTRUCTING TENANT OR EMPLOYEE TO
SET FIRE TO GRASSLANDS IN VIOLATION OF G. S. 14-136, ET SEQ.

17 September 1952

A landlord or employer may be subject to criminal indictment for aiding and abetting in the commission of a felony or misdemeanor as the case may be if he instructs his tenant or employee to set fire to any grassland, brush pile or other combustible material without complying with the statutory requisites on the subject.

DEPARTMENT OF CONSERVATION AND DEVELOPMENT; ADOPTION OF
REGULATIONS; EFFECTIVE DATE AS TO REGULATIONS
AFFECTING EXISTING PROPERTY

12 November 1952

G. S. 113-137 requires that any regulation adopted by the Board of Conservation and Development which, if it should go into effect immediately, would tend to cause fishermen to lose their property, shall go into effect only after two years from the date of the regulation. Fish or fisheries, as used in this statute, would include all apparatus used in connection with such business.

CRIMINAL LAW; REQUIREMENTS THAT CERTAIN FIRES ARE TO BE
GUARDED BY WATCHMEN

25 November 1952

G. S. 14-140 provides that all persons, firms or corporations who shall burn any tar kiln or pit of charcoal, or set fire to or burn any brush, grass or other material, whereby any property may be endangered or destroyed, shall keep and maintain a careful and competent watchman in charge while such material is burning. This statute contains its own penalty, and neither the State Forester nor any of his deputies have any authority to take any action other than that prescribed in this statute.

PER DIEM OF MEMBERS OF THE JOHN H. KERR RESERVOIR
DEVELOPMENT COMMISSION

26 August 1953

Members of the John H. Kerr Reservoir Development Commission are not entitled to receive per diem for attending meetings but only necessary travel expenses, as provided by G. S. 143-288.

CONSERVATION AND DEVELOPMENT; COMMERCIAL FISHERIES;
LICENSE TAX ON NON-RESIDENT TRAWL BOATS

15 September 1953

In determining the tax that must be paid on trawl boats the residence or documentation of the boat determines whether resident trawl license taxes must be paid or non-resident trawl license taxes. The residence of the person owning the boat is not determinative of the type of tax charged.

OYSTERS; DREDGING; SIZE OF DREDGE

5 November 1953

Construing together G. S. 113-137, G. S. 113-210.1 and G. S. 113-216.2(a), it is thought that the Board of Conservation and Development does not now have the authority to pass a regulation allowing the use of oyster dredges weighing more than 100 lbs. Chapter 175, Session Laws of 1953.

COMMERCIAL FISHERIES; LICENSE TAX ON MOTOR BOATS AND POWER BOATS.

12 January 1954

Power boats and motor boats are subject to a license tax when such boats are used for commercial fishing purposes.

COMMERCIAL FISHERIES; PURCHASE TAX ON SHRIMP,
HARD CRABS, CLAMS AND OYSTERS

19 January 1954

1. Shrimp that were caught, processed and frozen in 1953 are not subject to taxation under the provisions of G. S. 113-174.6 which imposes a tax on all persons who purchase, catch or take for canning, packing, shucking or shipping certain enumerated sea products.

2. Shrimp shipped into North Carolina from other states and frozen in 1953 are not taxable in 1954 under the provisions of G. S. 113-174.6.

3. Fresh shrimp, hard crabs, clams and oysters shipped into North Carolina to be processed after January 1, 1954, are not taxable under the

provisions of G. S. 113-174.6 if the purchase of such products was made before January 1, 1954.

If the purchase was made in North Carolina after January 1, 1954, then such products would be subject to taxation.

COMMERCIAL FISHERIES; LICENSE TAXES; ONSLOW COUNTY EXEMPTION;
NUMBER OF LICENSES REQUIRED

26 January 1954

When a statute refers not merely to a particular statute but to the law governing a certain subject, the reference includes not only the law in force when the referring statute was enacted, but also subsequent laws on that subject so far as consistent with the statute. Therefore, Chapter 889 of the Session Laws of 1949, exempting certain residents of Onslow County from commercial fisheries license, taxes and fees imposed by G. S. 113-162 and 163 was not repealed by Chapter 1134 of the Session Laws of 1953 which rewrote the two above mentioned sections.

USE OF POISONOUS SUBSTANCES

15 April 1954

Neither the Board of Conservation and Development nor the Director of Conservation and Development can permit a scientist to take fish from North Carolina waters by the use of poisonous substances.

LICENSE TAX ON OYSTER DREDGE BOATS

26 April 1954

The tax of \$15.00 for each oyster dredge boat authorized by Section 2 of Chapter 1000, Public Laws of 1947, was probably repealed by Chapter 1134, Session Laws of 1953, by substituting a tax based upon the length of each trawl boat, dredge boat, motor boat and haul boat.

CONSERVATION AND DEVELOPMENT; COMMERCIAL SHRIMPING; USE OF TRAWL
AND SEINE FOR NONCOMMERCIAL SHRIMPING; APPLICABLE TAXES

14 May 1954

A resident using various types of equipment, including seines and boats, to catch shrimp solely for his personal consumption is not exempt from paying the license taxes on said equipment levied under Article 15A of Chapter 113 of the General Statutes.

HONDURAN FREIGHTER OMAR BABUN; DISPOSITION OF WRECK

26 May 1954

Wrecked ships and cargo not claimed by the owner may be sold by the commissioner of wrecks. If claimed by the owner or insurance carrier, the property could be disposed of by him.

FISHERIES; ENTRIES ON LAND COVERED BY WATER FOR FISHERIES

7 June 1954

A person may acquire grant for land under navigable water adjoining land owned by him, as authorized by G. S. 146-6, and his rights in such fishery are protected by G. S. 113-233 and Rules and Regulations of the North Carolina Commercial Fisheries, Section 58-(10).

DIGEST OF OPINIONS TO MEDICAL CARE COMMISSION

MEDICAL CARE COMMISSION; AUTHORITY TO LICENSE HOSPITALS; AUTHORITY TO LICENSE NURSING HOMES AND CONVALESCENT HOMES UNDER PRESENT LAW

13 August 1952

Nursing and convalescent homes are not hospitals as defined in the Hospital Licensing Act, and the North Carolina Medical Care Commission does not have authority to license and regulate such institutions.

NORTH CAROLINA MEDICAL CARE COMMISSION; COUNTY HOSPITAL; BOARD OF

TRUSTEES; AUTHORITY OF MEDICAL CARE COMMISSION IN SELECTION OF MEDICAL STAFF OF LOCAL HOSPITAL

28 October 1952

The North Carolina Medical Care Commission has no authority over the selection, election and admission of physicians and surgeons to the medical staff of local public hospitals. A physician who feels that he has been discriminated against in being excluded from the medical staff of a local public hospital has the remedy of a civil action in the Superior Court to invalidate the regulation or compel his admission to the staff.

MEDICAL CARE COMMISSION; HOSPITALS; BIDS UNDER PUBLIC CONTRACT AT;
LOWEST RESPONSIBLE BIDDER

3 April 1953

A public body awarding bids under the Public Contracts Act may award a bid to the second lowest bidder if a proper finding is made, based upon facts and circumstances, which shows that the second lowest bidder, in the opinion of the awarding body, is the lowest responsible bidder.

NORTH CAROLINA MEDICAL CARE COMMISSION; HOSPITAL DISTRICTS;
BOND ISSUE ELECTIONS; TIME OF ELECTION

10 July 1953

Elections for the approval and authorization of bonds to be issued by hospital districts can be held at any time after proper notice of election, and such elections are not affected by the holding of general elections.

HOSPITALS; EQUIPMENT; PUBLIC CONTRACTS ACT; LOWEST BIDDER

22 July 1953

Where hospital office furniture and fixtures are let by contract to the lowest responsible bidder and there are nine bids, including three lowest bidders, all of which are conceded to be responsible firms, the North Carolina Medical Care Commission has a right to insist as a condition of its grant in aid that the award shall go to the lowest bidder.

NORTH CAROLINA MEDICAL CARE ASSOCIATION; COUNTY HOSPITALS;
APPOINTMENT OF TRUSTEES OR MANAGERS

30 November 1953

Where the election to authorize the issuance of bonds for the construction and equipping of a hospital is held under G. S. 131-126.23, the board of trustees or managers to govern and construct the hospital should be appointed under G. S. 131-126.21, which is also a section of Article 13(b) of Chapter 131 of the General Statutes.

The appointment of trustees under other articles in the chapter on Public Hospitals would not be applicable, since the hospitals to be constructed, as authorized by these other articles, and the trustees to be appointed, apply to different situations and to limited tax levies.

DIGEST OF OPINIONS TO BOARD OF MEDICAL EXAMINERS

SALES; AIR CONDITIONING UNIT; STATE BOARD OF MEDICAL EXAMINERS

22 May 1953

A sale to the State Board of Medical Examiners is a sale to a state agency, and, therefore, is exempt from the sales tax as a sale to the State of North Carolina.

NAMES; CHANGE OF NAMES

7 January 1954

A license to practice medicine should bear the name being legally used by the applicant at the time the license is issued. This is true regardless of the fact that the applicant has changed her name between the time application is made for license and the time the same is granted.

DIGEST OF OPINIONS TO MERIT SYSTEM COUNCIL

MERIT SYSTEM COUNCIL; RIGHT OF EMPLOYEE WHO REFUSES TO TRANSFER
TO APPEAL TO COUNCIL

9 July 1952

A Merit System employee who refuses to transfer is guilty of gross misconduct and subject to dismissal, with right of appeal to the Merit System Council.

MERIT SYSTEM COUNCIL; PAYMENT OF INCREMENT TO
PROVISIONAL EMPLOYEE

28 July 1952

A provisional employee under the Merit System is not entitled to increment increases.

MERIT SYSTEM; COMPETITIVE AND PROMOTIONAL EXAMINATIONS;
VETERAN'S PREFERENCE

28 May 1953

Under S. B. 359 a veteran is given a 10-point preference on original competitive examinations, and on promotional registers derived from such examinations he is given a preference of one-point for each year of service in the armed forces and for the greater fraction of a year but not to exceed five points. S. B. 359 is retroactive in its application and promotional registry should be readjusted, but this does not disturb personnel who have been promoted to other positions under the former system. The greater fraction of a year should be determined by the number of days in the armed forces, since this determination will give a correct result, for there is no half way mark between 365 days, nor is it affected by Leap Year, since the law does not count the extra day in Leap Year.

DIGEST OF
OPINIONS TO STATE HOSPITALS
AND INSTITUTIONS

CHILD WELFARE—LABOR REGULATIONS; MINIMUM AGE AT WHICH CHILDREN
CAN BE EMPLOYED IN TUBERCULAR SANATORIUM

11 July 1952

G. S. 110-1 provides that no minor under sixteen years of age shall be permitted to work in connection with any gainful occupation at any time, provided that children between the ages of fourteen and sixteen may be employed outside school hours and during school vacations. G. S. 110-7 provides that no minor under eighteen years of age be employed at any occupation hazardous or injurious to the life, health, safety or welfare of such minor. The Commissioner of Labor advises that work at a tubercular hospital has not been classified as being hazardous or injurious to health.

EXPENDITURE OF APPROPRIATION OF \$187,500 MADE BY CHAPTER 1324 OF THE
SESSION LAWS OF 1953

10 June 1953

The Board of Directors of the North Carolina Sanatoria are required under Chapter 1324 of the Session Laws of 1953 to pay the sum of \$1.50 for each medically indigent patient being treated at the approved county-operated tuberculosis sanatoria. The payments cannot be divided and paid in less amounts than \$1.50 per patient.

WORKMEN'S COMPENSATION ACT; OCCUPATIONAL DISEASES;
TUBERCULOSIS NOT INCLUDED

30 September 1953

Tuberculosis is not included as one of the occupational diseases under the Workmen's Compensation law.

MOTOR VEHICLES; EQUIPMENT; USE OF SIRENS AND RED LIGHTS BY
HOSPITAL POLICE

3 November 1953

The State Hospital at Raleigh has the authority to equip with a red light and siren a vehicle owned by the hospital and used by its police officers in enforcing the law on the hospital grounds.

DIGEST OF
OPINIONS TO PERSONNEL DEPARTMENT

STATE PERSONNEL ACT; STATE BOARD OF ELECTIONS; STATUS OF
EXECUTIVE SECRETARY OF STATE BOARD OF ELECTIONS

29 December 1952

The position of Executive Secretary of the State Board of Elections is embraced within the broad statutory authority granted to the State Board of Elections authorizing it to make all provisions necessary to enforce the election law. The position of Executive Secretary, therefore, is not within the scope of coverage of the State Personnel Act.

PERSONNEL ACT; MERIT SYSTEM ACT; AUTHORITY TO FIX SALARIES; SALARY
INCREMENTS; RETENTION IN SERVICE OF PROVISIONAL EMPLOYEES

10 November 1953

The Personnel Department has complete control over the salary ranges of employees subject to its jurisdiction and the amount of salary that shall be paid such employees, and this includes employees of Merit System agencies. If a Merit System agency retains a provisional employee in service, then such an employee must be given automatic increments under the statute which provides that such increments shall be paid to employees whose salaries are below the middle of the salary range.

STATE PERSONNEL ACT; COVERAGE OF NORTH CAROLINA ART SOCIETY

24 June 1954

The North Carolina State Art Society is an agency of the State and is subject to the provisions of the State Personnel Act, the Retirement System Act, and other acts governing the employees of such agencies.

**DIGEST OF
OPINIONS TO BOARD OF EXAMINERS OF
PLUMBING AND HEATING CONTRACTORS**

**PLUMBING AND HEATING CONTRACTORS; APPLICATION OF STATUTE TO
THOSE MAKING MAJOR REPAIRS TO HEATING SYSTEMS**

21 May 1953

The replacement of a boiler in an already installed system of heating which involves the use of high or low pressure steam, vapor or hot water, would constitute engaging in the business of heating contracting within the meaning of G. S. 87-21(a) (5). This is true for the reason that the installation of a new boiler in a heating system would be a major repair or replacement in an already installed system of heating and would not come within the rule laid down in *STATE v. MITCHELL*, 217 N. C. 244, as a minor repair.

**LICENSE REQUIREMENTS OF PERSONS ENGAGED IN THE BUSINESS OF
PLUMBING AND HEATING CONTRACTING**

16 July 1953

The law makes no requirement as to the residence of a licensee connected with a partnership or corporation, and there is no legal objection to one licensee who is a partner or is an officer in a corporation signing contracts in the name of one or more partnerships or corporations if such licensee exercises general supervision over the work done by the partnerships or corporations.

Since there is no requirement in the law that before a person may secure a license from the State Board of Examiners of Plumbing and Heating Contractors before such person may be issued a privilege license in a town to engage in the business of plumbing and heating contracting, I do not think that a town could refuse to issue a privilege license upon application therefor to a person who is engaged in the business of plumbing and heating contracting in said town.

PLUMBING AND HEATING CONTRACTORS; ELIGIBILITY FOR LICENSE
WITHOUT EXAMINATION

14 December 1953

The wording of the plumbing and heating contractors' law in no wise contemplates the issuance of a license without examination to a person who may become affiliated with, or part owner of, a partnership or corporation as of each census year, regardless of population.

DIGEST OF
OPINIONS TO COMMISSIONER OF PAROLES

CRIMINAL LAW; JUDGMENT; AMENDING OR SETTING ASIDE AT
SUBSEQUENT TERM

31 March 1954

Where judgment is entered in a criminal case and there is no retention of same for further orders and no suspension or continuance upon conditions, the judgment cannot be changed after the expiration of the term of court in which it was entered.

DIGEST OF
OPINIONS TO STATE PROBATION COMMISSION

PROBATION; PAROLE; TERMINATION OF PROBATION UPON
COMMUTATION OF SENTENCE

14 January 1953

Where the Parole Commissioner commutes a sentence upon certain conditions, the prisoner having previously been placed on probation, the Parole Commissioner assumes jurisdiction over the prisoner, and the Probation Commission is discharged from further responsibility.

CRIMINAL PROCEDURE; PROBATION; AUTHORITY TO FIX BOND UNDER
G. S. 15-200 AS AMENDED

20 November 1953

Under G. S. 15-200, as amended by Chapter 43, Session Laws of 1953, it is doubtful that any one except the Judge before whom the probationer is brought can fix bond. Of course the court might very well provide in its order that the bond be accepted by the Clerk and that the Clerk pass on the solvency of the sureties.

PROBATION; VIOLATION OF CONDITIONS OF PROBATION BEFORE EXPIRATION OF
PROBATION PERIOD; ARREST AND RETURN OF PROBATIONER AFTER
EXPIRATION OF PROBATION PERIOD

26 April 1954

Where a probationer fails to report to the probation officer and changes his residence to another part of the State without permission and his residence is unknown, an order requiring his arrest and appearance before the court before the probation expires gives the court jurisdiction to determine the question of a violation of probation and to require him to complete the sentence. It is also thought that the same action can be taken after the expiration of the five year period because the absence of the defendant and his concealment would result in a situation where the court would still have jurisdiction.

PROBATION COMMISSION; AUTHORITY OF EMERGENCY JUDGE TO
TERMINATE PROBATION

23 June 1954

An emergency superior court judge duly assigned to hold a superior court of a county, the same being a civil term, has power and authority to terminate probation.

DIGEST OF
OPINIONS TO STATE BOARD OF
PUBLIC WELFARE

PUBLIC WELFARE; LEGAL SETTLEMENT; LEGAL SETTLEMENT OF CHILD

22 July 1952

The fact that the juvenile court of a county assumes jurisdiction over children who happen to be within the jurisdictional district of the court

does not change or supersede or affect the question of legal settlement nor does it prevent the legal settlement of the children from following the legal settlement of the father when he moves to another county.

PUBLIC WELFARE; COUNTIES; LEGAL SETTLEMENT; PERSON RESIDING IN
COUNTY FOR MEDICAL TREATMENT AND NURSING CARE

19 September 1952

A person who goes from the county of her legal settlement to another county for medical treatment and remains in that county in a hospital and various nursing homes for over a year does not acquire legal settlement in the county where she receives such medical treatment.

HOSPITALS AND SANATORIA; CHARGES FOR PERSONS COMMITTED AS PRISONERS
TO THE NORTH CAROLINA SANATORIUM

2 October 1952

The State Sanatorium is authorized to charge counties for special types of services performed on their residents, even though they are prisoners and are committed for violations of the tuberculosis law.

ADOPTION; PARENT'S SURRENDER AFFIDAVIT GIVEN TO COUNTY SUPERIN-
TENDENT OF PUBLIC WELFARE; NON-DISCLOSURE OF DOCUMENTS

7 October 1952

The surrender affidavit made to the superintendent of public welfare is a document which is not open to public inspection under the adoption law.

PUBLIC WELFARE; INSPECTION OF MONTHLY CHECK
REGISTER IN WELFARE OFFICE

17 June 1953

Since the enactment of Chapter 882 of the Session Laws of 1953 a county welfare department can allow citizens to inspect the check register showing the amount, date and name to whom assistance payments are made, but no case data can be disclosed nor the name of any child for whom aid to dependent children is paid.

TRANSFERS OF APPROPRIATIONS WITHIN A DEPARTMENT

30 June 1953

Transfers of appropriations by a Department may be made by the Director of the Budget, upon the request of the head of the Department,

as authorized by G. S. 143-23. Such transfers would include funds other than strictly administrative funds, such as funds for Old Age Assistance, Aid to Dependent Children, and Care of Dependent Children, etc.

PUBLIC WELFARE; ADOPTION; CONSENT WHERE ONE OR BOTH PARENTS
ARE MENTALLY INCOMPETENT; S. B. 47

6 July 1953

Under S. B. 47 the adoption court may appoint a next friend to give or withhold consent upon a finding of mental incompetency of one or both of the natural parents of a child. This is not based on incurable insanity, and the County Superintendent of Welfare can make the investigation as to incurable insanity and also give or withhold consent for adoption purposes.

ADOPTION; RESIDENCE; RESIDING IN

27 August 1953

The adoption law requires that the petitioners shall have resided in North Carolina for one year next preceding the filing of the petition. This implies more than a mere temporary lodging and has the concept of a place of abode with some degree of permanency. A provision of the adoption law permitting a county superintendent to accept the surrender of a child in the county where the parents have established residence does not imply any particular length of time as to residence, and parents who come into a county with the intention of making such county their home can establish such residence.

PUBLIC WELFARE; LEGAL SETTLEMENT

2 October 1953

A veteran coming into this State for the purpose of being a patient in a veterans' hospital does not thereby acquire a legal settlement in North Carolina. A mentally incompetent person cannot acquire a legal settlement by merely changing his previous place of residence, but such person continues to keep the settlement of his or her parent or parents.

ADOPTION; NECESSITY OF SERVICE OF PROCESS ON INSANE PARENT

13 October 1953

Chapter 906 of the Session Laws of 1953 prescribes how consent should be obtained in an adoption proceeding when a parent or parents have been adjudged to be mentally incompetent. It is not necessary to serve process on such mentally incompetent persons.

ADOPTION; COUNTY IN WHICH SURRENDER CAN BE MADE TO
SUPERINTENDENT OF PUBLIC WELFARE

2 March 1954

Under the provisions of G. S. 48-9, only the county superintendent of public welfare of the county in which a child was born or the county in which the parent or parents of the child resided may accept the surrender of the child, as authorized in that section.

ADOPTION; VALIDITY OF DIRECT CONSENT AFTER ADOPTION PROCEEDING IS
REVOKED, DISMISSED, OR CANCELLED

24 May 1954

Where a direct consent is given to the adoptive parents in an adoption proceeding and the proceeding is revoked, cancelled, or dismissed, the consent filed in said proceeding becomes void and will not be a valid consent in an adoption proceeding subsequently instituted by the same party.

DIGEST OF
OPINIONS TO DIVISION OF PURCHASE
AND CONTRACT

DIVISION OF PURCHASE AND CONTRACT; FEDERAL EXCISE TAX;
NON-TAX-EXEMPT ARTICLES; CONSTRUCTION OF CONTRACT

9 June 1953

When the Division of Purchase and Contract requests bids for merchandise, specifically requesting that the Federal tax, if any, be excluded in making such bid, and the bid is accepted, and it later develops that items bid on were not tax exempt, the State is liable to the bidder for such Federal taxes as may be involved.

DIGEST OF
OPINIONS TO RETIREMENT SYSTEM

STATE SOCIAL SECURITY ACT (CHAPTER 562, SESSION LAWS OF 1951);
COVERAGE OF EMPLOYEES OF BOARD OF EXAMINERS OF
ELECTRICAL CONTRACTORS

1 July 1952

The employees of the State Board of Examiners of Electrical Contractors are subject to coverage under the Old Age and Survivors' Insurance Act by virtue of Chapter 562 of the Session Laws of 1951. The opinion of the Federal attorneys, however, should be obtained before these employees are finally placed in coverage under the Act.

COVERAGE OF MUNICIPAL EMPLOYEES BY MEANS OF STATE SOCIAL
SECURITY ACT; TOWN ATTORNEY AS EMPLOYEE

2 July 1952

An attorney employed by a town and paid a regular monthly salary would be covered under the Social Security Act if the regular monthly salary is his complete compensation. If the monthly salary is but a retainer fee and the attorney presents a bill for each piece of legal work done, then he would not be covered under the Act.

LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM; EMPLOYEES OF
COUNTY HOSPITAL; SOCIAL SECURITY

22 July 1952

The employees of a county hospital operated by a board of trustees appointed by the board of county commissioners, for retirement and Social Security purposes, have the same status as the general employees of the county.

TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM; DISABILITY
RETIREMENT; PAYMENT OF DIFFERENCE BETWEEN RETIREMENT
ALLOWANCE AND AVERAGE FINAL COMPENSATION WITH
REDUCTION OF PENSION

28 July 1952

The Teachers' and State Employees' Retirement System does not provide for a partial disability retirement. A person mentally or physically incapacitated for the further performance of duty, and which incapacity is likely to be permanent and who has served ten years in the System, can receive a disability retirement allowance and should such person recover and engage in a gainful occupation paying more than the difference between the retirement allowance and average final compensation, then such person's pension is reduced according to the formula in the statute. No member, however, can work full time in any positions covered by the statute and at the same time receive disability payments.

LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM; BOARD OF CEME-
TERY COMMISSIONERS FOR CITY OF CONCORD; PUBLIC EMPLOYEES
SOCIAL SECURITY AGENCY

4 August 1952

The Board of Cemetery Commissioners of the City of Concord, created by Chapter 199 of the Private Laws of 1921, is an agency of the City of Concord, and its employees should be covered under the Local Governmental

Employees' Retirement System since the City of Concord has heretofore elected to comply with, for the purpose of retirement, for its City employees.

SOCIAL SECURITY COVERAGE; CHAPTER 562 OF THE SESSION LAWS OF 1951;
COVERAGE OF EMPLOYEES OF BUNCOMBE COUNTY ASSOCIATION FOR
THE BLIND AND GUILFORD INDUSTRIES FOR THE BLIND

29 August 1952

Persons receiving assistance in the aid to the blind program in the form of occupations or work with the industries for the blind promoted by the State are not eligible for coverage under the Old Age and Survivors Insurance provision of the Social Security Act.

TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM;
LEAVE OF ABSENCE; BOARD OF TRUSTEES

2 October 1952

It is within the discretion of the Board of Trustees of the Retirement System to determine whether or not a leave of absence contributes to the efficiency of an employee so that such employee can return to the Retirement System.

LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM; COUNTY HOSPITAL;
EMPLOYER; HOSPITAL UNIT AS EMPLOYER

21 November 1952

The employees of a county hospital operated by a board of trustees should be classed as county employees for purposes of coverage under the Local Governmental Employees' Retirement System Act.

TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM; 1947 TWENTY-
YEAR AMENDMENT; ACCRUAL OF TWENTY YEARS PRIOR TO THE
PASSAGE OF AMENDMENT

21 November 1952

The 1947 provision of the Teachers' and State Employees' Retirement Act giving certain vested rights to those employees with twenty years of creditable service should be construed retroactively and should apply to those employees who had twenty years of accrued creditable service prior to the enactment of the so-called 1947 twenty-year amendment.

TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM; STATE EMPLOYEES;
EMPLOYEES OF THE COMMISSARY; STATE HOSPITAL AT MORGANTON

5 January 1953

The employees of the commissary of the State Hospital at Morganton are eligible for coverage under the Teachers' and State Employees' Retirement System.

TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM; DISABILITY
RETIREMENT; SERVICE RETIREMENT

28 January 1953

A person who is on disability retirement but who already has twenty years or more of accrued creditable service upon reaching sixty years of age can elect to have service retirement.

PUBLIC LIBRARIES; COVERAGE OF EMPLOYEES UNDER TITLE II OF THE SOCIAL
SECURITY ACT; ARTICLE 2 OF CHAPTER 135 OF THE GENERAL STATUTES

25 June 1953

Employees of libraries organized under Article 8 of Chapter 160 of the General Statutes and libraries organized under Public-Local and Private Acts of the General Assembly of this State are instrumentalities of Government, and their employees are entitled to coverage under Title II of the Social Security Act through the instrumentality of the State Agency organized by our Enabling Act. Libraries operating under charter granted by the Secretary of State as non-profit, educational corporations are not covered under the State Act and should seek direct coverage through the office of the Director of Internal Revenue.

TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM; SOCIAL SECURITY;
COVERAGE OF EMPLOYEES OF COUNTIES, CITIES AND TOWNS; ARTICLE 2,
CHAPTER 135 OF THE GENERAL STATUTES; ADMINISTRATION OF PRO-
GRAM IN BEHALF OF COUNTIES, CITIES AND TOWNS; EMPLOYEES
EMPLOYED AND PAID UNDER THE AUTHORITY OF SUBSECTION
(f) OF G. S. 135-24; PERSONNEL DEPARTMENT

10 November 1953

The Personnel Department would not have jurisdiction over an employee employed by the State Social Security Agent from a fund contributed entirely to and maintained by the counties, cities and towns of the State.

TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM; CLASSROOM
TEACHERS' PENSION UNDER G. S. 135-14; MEANING OF PHRASE
"WITHOUT ADEQUATE MEANS OF SUPPORT"

6 January 1954

The phrase "without adequate means of support" is used in the law which provides a pension for classroom teachers who have taught 20 years or more and who meet other eligibility conditions. It is a relative term and means that a person should have the necessary things for his maintenance, health and lodging according to his station in life and has the same meaning as the phrase "adequate support" in prosecutions of abandonment of wives and children.

DIGEST OF
OPINIONS TO TEACHERS COLLEGES

VETERANS; EDUCATIONAL ADVANTAGES FOR CHILDREN OF WORLD WAR
VETERANS; SCHOLARSHIPS

21 July 1952

Fees charged to students at a State institution to cover the cost of entertainments, athletics, student publications and other related student activities which are required of students as a condition to remaining in school should be included as a part of the scholarships granted pursuant to Article 15 of Chapter 116 of the General Statutes to children of World War veterans.

STATE INSTITUTIONS; PROPERTY; EXCHANGE OF REAL PROPERTY
HELD FOR INSTITUTION

23 September 1952

Property owned by a State institution may be conveyed by the Governor and Secretary of State with the approval of the Council of State in exchange for other real property when it is to the advantage and interest of the institution to do so, and such is recommended by the Board of Trustees of the institution.

LEGAL SETTLEMENTS; GOVERNMENT EMPLOYEES RESIDING IN THE DISTRICT OF COLUMBIA; PAYMENT OF OUT-OF-STATE TUITION AT STATE INSTITUTIONS.

11 March 1953

A person who is in the employ of the Federal Government and who maintains a home in North Carolina and votes here is a legal resident of North Carolina and his minor children are entitled to pay in-State tuition at State-supported institutions.

CORPORATIONS; AUTHORITY TO MAKE DONATIONS TO EDUCATIONAL INSTITUTIONS

24 September 1953

G. S. 55-26 authorizes every corporation, through its board of directors, without a vote of the stockholders, to make contributions or gifts to trusts, community chests, funds, foundations, or associations organized and operated exclusively for religious, charitable, literary, scientific, or educational purposes, or for the prevention of cruelty to children or animals, not exceeding 5% of the net income of such corporation. Such donations are exempt from federal and state income taxation. Deductions allowed individuals for such donations may not exceed 15% of such income.

RIGHT OF TEACHERS' COLLEGES AT ELIZABETH CITY, FAYETTEVILLE AND WINSTON-SALEM TO OFFER POST-GRADUATE COURSE FOR PRINCIPALS

21 April 1954

Teachers' Colleges at Elizabeth City, Fayetteville and Winston-Salem may, with the approval of the State Board of Education, offer post-graduate work for the training of elementary school principals provided a sufficient appropriation is made by the General Assembly therefor.

DIGEST OF OPINIONS TO VETERANS COMMISSION

DOUBLE OFFICE HOLDING; COLLECTOR OF THE PORT OF WILMINGTON AND MEMBER OF THE NORTH CAROLINA VETERANS COMMISSION

3 August 1953

The office of Collector of the Port of Wilmington and that of membership on the North Carolina Veterans Commission are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

DIGEST OF OPINIONS TO BOARD OF COSMETIC ART

STATE BOARD OF COSMETIC ART; SECRETARY; PERSONNEL
DEPARTMENT; SALARY

13 August 1952

The position of Executive Secretary of the State Board of Cosmetic Art is not subject to the jurisdiction of the State Personnel Department. The salary of such Secretary is fixed by the Governor, with the approval of the Advisory Budget Commission.

COSMETIC ART; RECOGNITION OF BEAUTY SCHOOLS IN VIRGINIA

9 July 1953

The N. C. State Board of Cosmetic Art is authorized to approve beauty colleges in other states upon making a reasonable investigation as to the status of such cosmetic art schools or colleges. In making such approval a personal inspection is not necessary, but an investigation should be made upon reliable information. On approving such schools and colleges the same conditions and standards applied in this State should be applied to such out-of-state schools and colleges.

COSMETIC ART BOARD; RECIPROCITY FEES

9 July 1953

Under the amendment to the Cosmetic Art Laws by the General Assembly of 1953, the N. C. State Board of Cosmetic Art is authorized to charge the same reciprocity fees as are charged applicants from this State who desire to practice in such other states.

STATE BOARD OF COSMETIC ART; APPROVAL OF COSMETIC SCHOOLS AND
COLLEGES; RIGHT OF INSPECTORS OF STATE BOARD OF COSMETIC ART
TO INSPECT RECORDS RELATING TO STUDENTS OF SUCH SCHOOLS
AND COLLEGES; REVOCATION OF APPROVAL

10 July 1953

The State Board of Cosmetic Art is given the right by statute to approve cosmetic schools and colleges, and its inspectors have a right to see the records relating to students of such schools and colleges, and if access to records is refused, the approval of such school or college may be revoked after a proper hearing.

DIGEST OF OPINIONS TO WILDLIFE RESOURCES COMMISSION

GAME LAWS; BLOCKING PASSAGE OF FISH IN STREAMS

24 March 1953

The term "river" or "creek" as used in G. S. 113-251 would seem to include a canal dredged between a river and a lake whereby water flows from the river to the lake in periods of extreme low water and from the lake to the river under normal conditions.

MEMBERS OF WILDLIFE RESOURCES COMMISSION; PER DIEM

28 May 1953

The compensation for members of the Wildlife Resources Commission is \$10.00 per diem and actual travel expenses while in attendance of meetings of the Commission or engaged in the business of the Commission.

GAME AND FISHING LAWS; WILDLIFE RESOURCES COMMISSION; AUTHORITY TO REGULATE GAME FISHING AND HOOK AND LINE FISHING IN COMMERCIAL WATERS

6 October 1953

The states have authority to regulate fisheries within their own waters. COMMONWEALTH v. MANCHESTER, 152 Mass. 230; Affirmed in 139 U. S. 240; ABBY DODGE, 223 U. S. 166; SKIRIOTES v. FLORIDA, 313 U. S. 69.

Since G. S. 153-247 has transferred to the Wildlife Resources Commission all the duties, powers, jurisdiction and responsibility *now vested by statute in and heretofore exercised by the Commissioner of Game and Inland Fisheries*, it is thought that the Wildlife Resources Commission has authority to regulate game fishing and hook and line fishing in commercial waters and to license persons to fish in commercial waters to the same extent that these activities were formerly carried on by the Commissioner of Game and Inland Fisheries.

COURTS; JURISDICTION FOR VIOLATION OF REGULATIONS OF WILDLIFE RESOURCES COMMISSION

6 October 1953

G. S. 113-109, as amended by Chapter 1141, Session Laws of 1953, provides that violation of regulations on the Wildlife Resources Commission relating to game fish is punishable for the first offense by a fine of not less

than \$10 nor more than \$50 or imprisonment for not more than 30 days *unless a greater penalty be prescribed for the specific act or acts.* G. S. 113-136 makes it a misdemeanor to violate regulations relating to the use of nets, appliances or means employed in taking or killing fish.

G. S. 7-393(e) provides that when a justice of the peace issues a warrant for an offense of which the Superior Court has jurisdiction, he must make the warrant returnable to the County Criminal Court in counties having such courts. From the foregoing, it is thought that a justice of the peace in Lee County, which has a Criminal Court, should make a warrant for the offense of netting fish in violation of regulations of the Wildlife Resources Commission returnable to the County Criminal Court instead of trying the case himself.

GAME WARDENS; RIGHT TO ENTER UPON LAND, AFTER BEING FORBIDDEN,
TO INVESTIGATE GAME LAW VIOLATIONS

28 October 1953

Game wardens have the right to enter upon land for the bona fide purpose of investigating violations of the game and fishing laws and to ascertain whether or not violations of such laws are taking place thereon, notwithstanding such land may be posted and the owner forbids them from entering thereon. Such rights could not be abused for ulterior purposes and should be exercised only in a reasonable and fair manner.

WILDLIFE RESOURCES COMMISSION; HUNTING LICENSE REQUIRED
TO TAKE UNPROTECTED BIRDS

9 November 1953

Construing together G. S. 113-95 and G. S. 113-102, it is thought that a hunting license is required to hunt even those birds and animals classified in the statute as "unprotected," for instance, crows.

EFFECT OF PROCLAMATION CLOSING WOODLANDS AND INLAND WATERS
TO HUNTING AND FISHING

17 November 1953

Chapter 305 of the Session Laws of 1953, authorizing the Governor to issue a proclamation closing woodlands and inland waters to hunting, fishing and trapping, and the proclamation issued in pursuance thereto, would not prohibit conducting field trials on land which is used as a nursery farm, part of which is open land and part containing some shrubbery. The Act and the proclamation would not apply to hunting in open cultivated lands, but prohibits setting out of any camp fires or burning brush, grass or other debris within 500 feet of any woodland.

APPOINTMENT OF DEPUTY GAME PROTECTORS FOR SERVICE
PRIMARILY ON PRIVATE PROPERTY

23 November 1953

(1) A game protector appointed by the Wildlife Resources Commission has no authority to enforce trespass laws on privately owned property.

(2) Appointment of a deputy game protector for the exclusive purpose of enforcing game laws on specific private property may infringe Section 7, Article I of the North Carolina Constitution.

(3) If a private landowner pays a salary to a deputy game protector for enforcement of the game laws on the private landowner's property, it may be that the deputy game protector would be in violation of G. S. 14-217 and that the landowner would be in violation of G. S. 14-218.

CLERK'S FEES; AUTHORITY OF CLERK OF SUPERIOR COURT TO DEMAND FEE
IN ADVANCE FOR CERTIFYING A WARRANT FOR SERVICE
OUTSIDE HIS COUNTY

5 March 1954

A Clerk of the Superior Court has no authority to demand his fee in advance for certifying a warrant of a justice of the peace which is to be executed outside the justice's county. He should endorse the amount of fee on the warrant as provided in G. S. 6-6.

WILDLIFE RESTORATION PROJECTS; AUTHORITY OF WILDLIFE RESOURCES
COMMISSION TO ERECT PERMANENT IMPROVEMENTS ON PROPERTY
LEASED FOR USE AS A WILDLIFE RESTORATION PROJECT

10 March 1954

Construing G. S. 113-84 and G. S. 113-123 with the Pittman-Robertson Act (50 Stat. 917) it appears that the laws of North Carolina authorize the North Carolina Wildlife Resources Commission to build a permanent roadway upon an area leased by the State as a game refuge for a period of 25 years.

RULES AND REGULATIONS OF THE WILDLIFE RESOURCES COMMISSION
CONCERNING THE HOLDING OF WILDLIFE IN CAPTIVITY;
PROSECUTIONS FOR VIOLATION OF G. S. 113-104

5 April 1954

- (1) The Wildlife Resources Commission has authority to promulgate rules and regulations providing minimum standards for facilities used in keeping wildlife in captivity.
- (2) A permit to possess wild animals for the purpose of exhibition issued under G. S. 113-91 (a) may be revoked for violation of rules and

regulations relative to facilities for keeping wildlife in captivity and violation of such rules and regulations would justify refusal to issue such a permit.

- (3) A person who possesses wildlife in captivity without a permit after a permit has been refused him would be guilty of violating G. S. 113-104.
- (4) In a prosecution for unlawful possession of wildlife in violation of G. S. 113-104 the State should allege and prove that the possession is not permitted by Article 7 of Chapter 113 of the General Statutes. It may be that it would not be necessary to allege and prove that the possession was in a closed season and without a permit but it would seem to be the safest practice for the State to allege these matters and prove them.
- (5) Where defendant is charged with unlawful possession of a bear in violation of G. S. 113-104 and is, on his motion, discharged on the ground that the statute does not prohibit the act charged, the dismissal amounts to a judgment for the defendant upon a demurrer and the State may appeal pursuant to the provisions of G. S. 115-179.

GAME FISH; CIRCUMSTANCES CONSTITUTING A SALE OF GAME FISH

3 June 1954

A system whereby the owner of a private pond makes a charge for fishing in that pond and that charge is graduated according to the number of game fish caught amounts to a sale of game fish.

DIGEST OF OPINIONS TO DEPARTMENT OF ARCHIVES AND HISTORY

INCOME TAX; DEDUCTIONS; GIFTS TO STATE LITERARY AND HISTORICAL ASSOCIATION

29 June 1953

Contributions to the State Literary and Historical Association of North Carolina are deductible for State income tax purposes.

HISTORICAL SITES COMMISSION; TRAVEL EXPENSES

3 September 1953

The law creating the Historical Sites Commission provides that they shall serve without compensation and no provision is made by law for the payment of their actual expenses while attending meetings of the Commission.

DIGEST OF OPINIONS TO BURIAL ASSOCIATION COMMISSION

MUTUAL BURIAL ASSOCIATIONS; DOUBLE BENEFITS; HEALTH REQUIREMENTS;
APPLICANT'S BIRTH DATE; PERSONAL LIABILITY OF FUNERAL DIRECTOR
IN CASES OF INSOLVENCY OF ASSOCIATION

21 July 1953

Members availing themselves of the double benefit provisions of the Burial Association Act must meet the health requirements set forth in the Act for original membership. Persons electing to double their benefit must furnish their correct birth date. The amendment of 1953 to the Burial Association Law did not intend to make funeral directors personally liable for the face amount of policies in case of insolvency of the association.

MUTUAL BURIAL ASSOCIATIONS; AMENDMENT TO G. S. 58-226,
PROVIDING DOUBLE ASSESSMENTS; CHARTER

15 November 1953

All Mutual Burial Association charters, which contain limitations of liability not exceeding \$100.00, should be amended since an amendment to the statute containing the by-laws now provides that upon the payment of double assessments double benefits may be paid.

MUTUAL BURIAL ASSOCIATIONS; MUTUAL BURIAL ASSOCIATION COMMISSIONER;
REDUCTION IN ASSESSMENTS WHEN SURPLUS FUND COMPLIES
WITH FORMULA

1 March 1954

Assessments against members of mutual burial associations can be reduced by the association when the surplus equals the amount of \$3.00 per capita. This statute has not been changed, and the fact that the benefits have been doubled by an amendment to the Act does not authorize the burial associations' commissioner to increase the formula to \$3.00 per \$100.00 of liability.

DIGEST OF OPINIONS TO BOARD OF EMBALMERS AND FUNERAL DIRECTORS

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS; PRACTICING
WITHOUT LICENSE; RULES AND REGULATIONS;

REVOCATION OF LICENSES

23 July 1953

The State Board of Embalmers and Funeral Directors can indict a person who practices or holds himself out as practicing the art of embalming without being licensed. The regulations of the Board as to the conduct of funerals pertain to sanitation only. The Board has no authority to revoke licenses, since the statute does not grant that right.

DIGEST OF OPINIONS TO LIBRARY COMMISSION

PUBLIC LIBRARIES; MUNICIPALITIES; APPROPRIATIONS FOR SUPPORT
OF LIBRARY; BUDGET

16 June 1953

Under the provisions of G. S. 160-65 as rewritten by Chapter 721, Session Laws of 1953 (now G. S. 160-66), it is thought that library funds are subject to budgetary control and that a surplus carried over at the end of the fiscal year will be taken into consideration in making the budget for the new fiscal year. G. S. 153-124.

LIBRARIES; BOOKMOBILE ACCIDENTS; TAXATION

25 August 1953

While there are no cases on the subject it is not thought that libraries would be liable for damages induced to persons or property by means of bookmobile accidents.

DIGEST OF OPINIONS TO LICENSING BOARD OF CONTRACTORS

GENERAL CONTRACTORS; INTERMEDIATE LICENSE; VALUE OF PROJECT;
INCLUSION OF MATERIALS FURNISHED BY OWNER

20 April 1953

For the purpose of construing the \$300,000.00 limitation on projects entered into by contractors with Intermediate License, set by G. S. 87-10, the costs of the materials furnished by the owner must be included.

CONTRACTORS' LICENSE; LANDSCAPING.

24 May 1953

Persons or firms engaged in landscaping work are not required to secure a license under Chapter 87 of the General Statutes.

DIGEST OF OPINIONS TO RECREATION COMMISSION

MUNICIPALITIES; USE OF SURPLUS FUNDS AND SPECIAL TAX LEVY
FOR RECREATIONAL PURPOSES

1 September 1953

A municipality that has voted a special ten cents tax levy for recreational purposes may use non-tax revenues to supplement the tax levy, but it is thought that no part of the General Fund tax revenues may be used for such purpose. G. S. 160-163(2). G. S. 18-81.1. PURSER v. LEDBETTER, 227 N. C. 1.

DIGEST OF OPINIONS TO STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

CERTIFIED PUBLIC ACCOUNTANTS; EXAMINATION OF PAPERS; PUBLIC RECORDS

12 August 1952

While G. S. 93-12(3) gives to the Board of Certified Public Accountant Examiners the power to formulate rules for the government of the Board and for the examination of applicants, it would seem that a rule providing that the examination papers of applicants will not be accessible for inspection at any time and after twelve months the papers will be destroyed is unreasonable and therefore invalid. G. S. 132-6 provides that every person having custody of public records shall permit them to be inspected and examined at reasonable times. G. S. 121-6 provides that the various State agencies and local units of government may turn over to the State Department of Archives and History any public records no longer in current use. This section also provides for the destruction of such old records under the circumstances pointed out in the statute.

DIGEST OF OPINIONS TO DEPARTMENT OF MOTOR VEHICLES

**MOTOR VEHICLES; DRIVERS' LICENSES; PERIOD OF REVOCATION AND SECOND
OFFENSE OF DRUNKEN DRIVING OCCURRING PRIOR TO APRIL 14, 1951**

17 July 1952

An operator whose conviction of a second offense of drunken driving occurred prior to April 14, 1951 is governed by the statute prior to the 1951 amendment, and his license is suspended indefinitely, with the limitation that he may apply for a reissuance at the end of three years from the date of revocation.

**MOTOR VEHICLES; EQUIPMENT; RED LIGHT OR SIREN USED BY CIVILIAN
DEFENSE CO-CHAIRMAN**

18 July 1952

A local co-chairman of Civilian Defense is not authorized to use a red light or siren on his privately-owned vehicle.

MOTOR VEHICLES; MEANING OF CONVICTION; FORFEITURE OF BOND

29 July 1952

G. S. 20-24 (c) provides that for the purpose of that article a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, is deemed to be the equivalent of a conviction. Therefore, the Department may suspend the driver's license of a person upon receipt from the Clerk of the Superior Court of notice that such person was charged with operating a motor vehicle at a speed in excess of 75 m. p. h., and forfeited the bond which he put up to secure his appearance.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT; RETURN OF
LICENSE PLATES FOR PURPOSE OF SALE

12 August 1952

One whose registration plates have been suspended pursuant to the Financial Responsibility Act may not have those plates returned to him for the purpose of selling the automobile prior to complying with the Financial Responsibility Act.

MOTOR VEHICLES; DRIVER'S LICENSE; FORFEITURE OF BAIL
WITH SUBSEQUENT BAIL POSTED

12 August 1952

Forfeiture of bail on a charge of drunken driving is the equivalent of conviction, and the operator's license must be revoked despite the posting of a new bond for a later appearance.

MOTOR VEHICLES; DRIVER'S LICENSE; REVOCATION FOR RECKLESS DRIVING;
CONVICTION BY JUSTICE OF THE PEACE

14 August 1952

A Justice of the Peace has no final jurisdiction over the crime of reckless driving and a conviction by him is a nullity.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT;
JUDGMENT FOR DAMAGES TO PROPERTY

15 August 1952

A judgment based on an action for damages to a filling station pump due to collision with an automobile is a judgment within the meaning of the Financial Responsibility Act. Failure to satisfy the judgment within sixty days requires suspension of the operator's license.

MOTOR VEHICLES; FOR HIRE; RIDE SHARING ARRANGEMENT

18 August 1952

A station wagon is not an automobile within the meaning of G. S. 20-38 providing exemptions from the requirement that certain vehicles obtain a "for hire" license.

MOTOR VEHICLES; CHAUFFEUR'S LICENSE; CARRYING MAIL

19 August 1952

(1) An employee of the United States does not have to obtain a chauffeur's license from the state in order to perform the duties of his employment.

(2) A person employed otherwise than by the United States for the principal purpose of operating a passenger motor vehicle other than a school bus, must obtain a chauffeur's license, but a person operating such vehicle as an independent contractor is not required to have such license.

(3) A person who drives any motor vehicle while in use as a public or common carrier of persons or property must obtain a chauffeur's license whether or not the employment relation exists, but one who drives a vehicle as a private or contract carrier is not required to obtain a chauffeur's license.

MOTOR VEHICLES; DRIVER'S LICENSE; DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR; PERIOD OF REVOCATION

19 August 1952

The provision for revocation of a driver's license for three years upon the second conviction for driving under the influence of intoxicating liquor does not apply where both convictions were had in the same court on the same day, both offenses having been committed prior to the first trial.

MOTOR VEHICLES; DRIVER'S LICENSE; SENTENCE SUSPENDED ON CONDITION LICENSE SURRENDERED FOR EIGHTEEN MONTHS

22 August 1952

An operator was sentenced to sixty days suspended on payment of fine, non-operation of a motor vehicle for eighteen months, and surrender of driver's license to the Clerk of Court for that time. The Department of Motor Vehicles has requested the license in order to suspend same for one year. At the end of the year, the operator is entitled to a new license on satisfying the requirements of the Financial Responsibility Act and providing he is otherwise eligible. While he is entitled to his license at that

time, he may be guilty of breaching the condition of the judgment.

MOTOR VEHICLES; DRIVER'S LICENSE; PROCUREMENT BY FRAUD;
HABITUAL VIOLATOR

22 August 1952

Obtaining a license fraudulently does not admit of suspending a properly obtained license. However, three convictions of excessive speeding plus a conviction for obtaining licenses fraudulently warrants a suspension as an habitual violator of the traffic laws.

MOTOR VEHICLES; DRIVER'S LICENSE; PERIOD OF REVOCATION FOR TWO
OFFENSES OF RECKLESS DRIVING

22 August 1952

The period of revocation for two convictions of reckless driving committed within a period of twelve months is one year.

MOTOR VEHICLES; DRIVER'S LICENSE; SUSPENSION FOR
FRAUDULENT USE OF LICENSE

27 August 1952

Permitting another to use an operator's license warrants suspension of the license for a period not exceeding one year in the discretion of the Department of Motor Vehicles.

MOTOR VEHICLES; DRIVER'S LICENSE; REVOCATION; ACCIDENT INVOLVING
PERSONAL INJURY

27 August 1952

A conviction of careless and reckless driving resulting in an automobile accident inflicting personal injuries authorizes the Department to suspend the operator's license for one year.

MOTOR VEHICLES; DRIVER'S LICENSE; REGISTRATION OF VEHICLE;
FARM TRACTOR

16 September 1952

Although a farm tractor is not a motor vehicle within the meaning of the Uniform Driver's License Law so that it may be operated on the highways by one without a driver's license, a farm tractor may be a motor vehicle within the meaning of the statute requiring the registration and license of the vehicle. The tractor must be licensed as a motor vehicle when its primary use is to enable the operator to ride on the highway for general purposes such as attending church services and ball games.

MOTOR VEHICLES; DRIVER'S LICENSE; EFFECT OF LIFTING SUSPENSION ON
SUBSEQUENT SUSPENSION

19 September 1952

When the Department voids a suspension for conviction within one year of two charges of speeding in excess of 55 m. p. h. and the operator is again convicted of the same offense within one year after the second conviction, the Department may then suspend the operator's license.

MOTOR VEHICLES; DRIVER'S LICENSE; REVOCATION FOR PERMITTING
ANOTHER TO DRIVE WHILE INTOXICATED

21 October 1952

A conviction of allowing a drunk to drive is a violation of G. S. 20-34 and is not grounds for suspension or revocation of the license.

MOTOR VEHICLES; DRIVER'S LICENSE; REVOCATION FOR AIDING AND
ABETTING DRUNKEN DRIVING

29 October 1952

One who is convicted of drunken driving through the use of evidence showing aiding and abetting is subject to revocation of his driver's license under G. S. 20-17.

MOTOR VEHICLES; HIGHWAY PATROL; JURISDICTION OF PATROL
OVER HIGHWAY 210

6 November 1952

The State Highway Patrol probably has jurisdiction over Highway 210 which is bordered by Fort Bragg Military Reservation.

MOTOR VEHICLES; UNSATISFIED JUDGMENT; JUDGMENT AGAINST MINOR
WITHOUT GUARDIAN

6 November 1952

Failure to appoint a guardian to defend a suit against a minor, followed by judgment by default, probably renders the judgment void and the Department should not suspend the rights of the defendant for failure to satisfy the judgment.

MOTOR VEHICLES; DRIVER'S LICENSE; REVOCATION FOR RECKLESS DRIVING;
CONSOLIDATION FOR JUDGMENT

12 November 1952

Operator was convicted on the same day of two offenses of reckless driving occurring on different days within a period of twelve months. That the court consolidated the cases for the purpose of imposing punishment does not keep the Department from revoking driving privileges as provided in General Statutes 20-17.

MOTOR VEHICLES; DRIVERS' LICENSES; CONVICTION OF DRUNKEN DRIVING
IN CANADA

18 November 1952

Conviction of drunken driving in Canada does not permit revocation of the operator's license.

MOTOR VEHICLES; DRIVER'S LICENSE; OPERATION AFTER DEPARTMENT
LIFTS SUSPENSION BUT PRIOR TO REISSUANCE OF LICENSE

26 November 1952

When the Department has notified an operator that his suspension has been lifted, but the operator has not yet complied with the requirements for obtaining reissuance of the license, he is guilty of driving without an operator's license and the Department has no authority to increase the period of suspension as provided by G. S. 20-28.

MOTOR VEHICLES; RULES OF THE ROAD; SCHOOL BUSES; PASSING BUS
WHEN STOP SIGNAL DISPLAYED FOR PURPOSE OF TURNING

5 December 1952

A motorist passing a school bus which has stopped on the highway and displayed its stop signal preparatory to making a turn but not to receiving or discharging passengers is not guilty of violating General Statutes 20-217.

MOTOR VEHICLES; DRIVERS' LICENSES; EFFECT OF CONVICTION IN SUPERIOR
COURT WHEN NO BILL OF INDICTMENT RETURNED

10 December 1952

The conviction of a misdemeanor tried originally in Superior Court, pursuant to a request for a jury trial in Recorder's Court, is a nullity unless he was tried on a bill of indictment.

MOTOR VEHICLES; UNSATISFIED JUDGMENT; EFFECT OF EXPIRATION OF
TIME FOR APPEAL

17 December 1952

A judgment becomes final within the meaning of the Financial Responsibility Act when the time for appeal expires and the appeal has not been perfected.

MOTOR VEHICLES; FRANCHISE BUS CARRIERS; TAX ON GROSS REVENUE;
DEDUCTIONS FOR RENTALS PAID

31 December 1952

When a common carrier of passengers for hire leases a vehicle from another common carrier of passengers for hire, the rental paid may not be deducted by the lessee from its gross revenue in computing the 6% license tax imposed upon common carriers of passengers for hire.

MOTOR VEHICLES; DRIVERS' LICENSES; EFFECT OF CONVICTION FOR
AIDING AND ABETTING COMMISSION OF A FELONY

12 January 1953

Aiding and abetting manslaughter or hit and run resulting in personal injury warrants revocation of the license.

MOTOR VEHICLES; DRIVER'S LICENSE; OUT OF STATE BOND FORFEITURE;
DRIVING WHILE LICENSE REVOKED; CONVICTION OF OTHER OFFENSE

12 January 1953

A bond forfeiture in Georgia is the equivalent of a conviction for purposes of suspending a driver's license. When an operator is convicted of failure to stop at a stop sign and the departmental records show that this offense was committed at a time when his license was suspended, the Department must add to the period of suspension a further period of suspension of double the time for which the original suspension was in force.

MOTOR VEHICLES; MOTOR VEHICLE SAFETY AND RESPONSIBILITY ACT OF 1953;
RELEASE OF INFORMATION

15 January 1953

Collision reports made pursuant to 20-166.1 are not public records and the information contained therein is confidential except for the reports made by State, city or county police or coroners.

MOTOR VEHICLES; UNSATISFIED JUDGMENT; FOREIGN JUDGMENT;
NECESSITY FOR DOCKETING IN NORTH CAROLINA

16 January 1953

In order for the license plates and registration of a North Carolina operator to be suspended under the Financial Responsibility Act, it is not necessary that the judgment be docketed in this State.

MOTOR VEHICLES; DRIVER'S LICENSE; DRIVING UNDER THE INFLUENCE OF
INTOXICANTS; PHYSICAL INCAPACITY

16 January 1953

A person charged with driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug, but who is unable to stand trial because of a heart condition, may have his license suspended by the Department of Motor Vehicles under the authority of G. S. 20-16(a) (1). If at the time such suspension terminates the Department is of the opinion that such person is still suffering from such physical disability as will prevent him from exercising reasonable control over a motor vehicle while operating it upon the highways the Department should not reissue the driver's license.

MOTOR VEHICLES; PENALTIES; ADMINISTRATION; ALLOWABILITY OF
OVERLOADING PENALTY IN CHAPTER XI; ARRANGEMENT

28 January 1953

An overloading penalty is not allowable in Chapter XI Arrangement.

MOTOR VEHICLES; TITLE AND REGISTRATION; EXEMPTIONS;
FEDERAL RESERVE BANKS

3 March 1953

The branch of the Federal Reserve Bank in Charlotte is not liable for the license and registration fee on motor vehicles owned by it and used by it in the conduct of its business.

MOTOR VEHICLES; DRIVER'S LICENSE; CONVICTION FOR ALLOWING
ANOTHER TO USE LICENSE

10 March 1953

One who has been convicted of lending his license to another person has violated G. S. 20-30 (b) and the Department may suspend his license under G. S. 20-16 (a) (6).

DRIVERS' LICENSES; DISCRETION IN REVOCATION FOR DRUNKEN DRIVING

1 April 1953

The Department has no discretion to return a license revoked for drunken driving.

MOTOR VEHICLES; REGISTRATION AND LICENSE PLATES;
UNOFFICIAL NOVELTY PLATES

20 April 1953

The use upon a motor vehicle registered in North Carolina of a plate colored and designed to resemble the official license plate is unlawful, notwithstanding the fact that in lieu of numbers such plate bears letters which taken together spell the name of a person.

MOTOR VEHICLES; REGISTRATION; VEHICLE REGISTERED IN ANOTHER STATE;
CHANGE OF RESIDENCE

20 April 1953

When the wife of a member of the Armed Services, with his consent, establishes her residence in North Carolina and brings to this State for regular use herein a motor vehicle registered by him in another state where he formerly resided, such vehicle must be registered in North Carolina and North Carolina license plates obtained therefor.

A resident of North Carolina must have a North Carolina driver's license before operating a vehicle in this State regardless of where the vehicle is registered.

FINANCIAL RESPONSIBILITY ACT; REVOCATION FOR FAILURE TO SATISFY
JUDGMENT BASED ON CONTRACT TO PAY DAMAGES FOR AN
AUTOMOBILE ACCIDENT

21 April 1953

A judgment based on a contract to pay damages for injury resulting from a motor vehicle accident is a judgment within the meaning of the Financial Responsibility Act.

MOTOR VEHICLES; DEALERS' PLATES; USE ON CAR CARRIER

27 May 1953

A dealer may use dealers' plates on a car carrier transporting its own cars in furtherance of its general business as a motor vehicle sales organization.

MOTOR VEHICLES; COURTS; JURISDICTION OVER SPEEDING CASES

3 June 1953

A municipal recorder's court created under G. S. 7-185 has exclusive original jurisdiction of all cases of speeding where the offense was committed within five miles of the corporate limits of the municipality. A county recorder's court created under G. S. 7-218 has exclusive original jurisdiction of all such cases where the offense was committed more than five miles from the corporate limits of a municipality wherein there is such a municipal recorder's court unless there is also in the county a special court created by special act of the General Assembly prior to 1916 and having jurisdiction over such offenses. Where there is such special court, it and the county recorder's court have concurrent original jurisdiction over cases of speeding where the offense was committed more than five miles from the corporate limits of a municipality in which there is a municipal recorder's court.

MOTOR VEHICLES; DRIVERS' LICENSES; SERVICE OF NOTICE; SERVICE BY CITY POLICEMAN; PICK UP IMMEDIATELY ON CONVICTION

6 July 1953

A city policeman may serve a revocation or suspension notice issued by the Department of Motor Vehicles and may pick up the license revoked or suspended thereby. A highway patrolman may pick up any license in court when the defendant has been found guilty of an offense warranting suspension, but he may not pick up such license in court when the defendant has been found guilty of having committed an offense for which revocation is mandatory, unless he receives notice of the conviction from the Clerk of Court. In either situation, the patrolman must be authorized by the Commissioner to suspend or revoke, and he must pronounce suspension or revocation upon demanding the license.

DRIVER'S LICENSE; POWER OF COURTS; COURT REVOCATION FOR 12 MONTHS FOR SECOND CONVICTION OF DRUNKEN DRIVING

18 August 1953

When an operator is convicted a second time of the offense of driving under the influence of an intoxicating liquor or narcotic drug, and the court, in imposing sentence, either recommends that his license be revoked for a period of twelve months or actually orders his license revoked for a period of twelve months, the Department of Motor Vehicles is required to revoke his license for the three year period set forth in G. S. 20-19. Only the Department of Motor Vehicles has authority to suspend or revoke an operator's license. A sentence of a court limiting the period of revocation or directing a period of revocation is ineffectual and does not bar the Department's acting under the statute.

MOTOR VEHICLES; DRIVERS' LICENSES; DRUNKEN DRIVING; SECOND CON-
VICTION; OUT-OF-STATE CONVICTION; NECESSITY FOR CHARGING
SECOND OFFENSE

18 August 1953

When an operator is convicted a second time of drunken driving, his license should be revoked for three years notwithstanding the fact that the first conviction occurred in South Carolina. It is not necessary for the warrant to charge him with a second offense.

MOTOR VEHICLES; REPORTS OF VIOLATIONS

25 August 1953

If a local traffic safety council or the Motor Vehicle Department receives a report that a motor vehicle has been operated in violation of the motor vehicle laws, and writes a letter to the registered owner so advising him, and requesting that he cooperate to make the highways safer, the only basis for suit against the council would be libel. If the statement is true there would be no liability. If it is not true there is no liability in the absence of publication of the charge, the mere dictation to a secretary not being publication of the letter.

If the automobile was being driven by some person other than the registered owner the writing of the letter to the owner of the vehicle would be publication.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT;
TIME OF REFUND OF DEPOSIT

12 October 1953

Money security posted pursuant to the provisions of the new Financial Responsibility Act should be returned at the end of one year from the date of the accident, except when security has been exacted because of default in payment on a written agreement releasing a party from liability, in which case security should be returned within one year from the date of its posting, subject to there being no action pending and no judgment rendered in such action.

MOTOR VEHICLES; UNSATISFIED JUDGMENTS; JUDGMENT FOR \$50 AND COSTS

26 October 1953

The Department is not authorized to suspend under the Financial Responsibility Act the license of an owner or operator who has failed to satisfy a judgment for \$50 plus costs for property damages arising out of the operation of a motor vehicle, since the costs do not constitute any part of the relief in a civil action.

MOTOR VEHICLES; OVERLOAD; MAIL TRUCKS

29 October 1953

The Federal Statute (18 USCA 1701) forbidding willful interference with the transportation of the mail does not apply to a reasonable delay of a truck carrying the mail incident to the weighing of that vehicle to determine whether it is overloaded.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY

29 October 1953

The Commissioner of Motor Vehicles may not refuse to reissue or reinstate a revoked or suspended driver's license when the person in question files a certificate showing that he has the appropriate liability insurance policy as described in G. S. 20-279.19, and is otherwise qualified to have such license reissued or reinstated. If such person is then the owner of a motor vehicle the only proof of financial responsibility which may be required of him is a certificate showing that he has an "owner's policy."

MOTOR VEHICLES; DRIVER'S LICENSE; SUSPENSION BY PATROLMAN

29 October 1953

The Commissioner of Motor Vehicles is empowered to delegate to highway patrolmen the authority to suspend and require surrender of the driver's license of a person convicted of an offense justifying such action by the Department, and may authorize the patrolmen to so act on behalf of the Department immediately upon the patrolmen's receiving proper notice of such conviction. However, the conduct of the patrolmen in and in the vicinity of the courtroom is subject to the control of the judge and the Commissioner's authorization will not absolve the patrolmen from the duty to comply with the instructions of the judge.

MOTOR VEHICLES; DRIVER'S LICENSE; RETENTION BY PATROLMAN

30 October 1953

A member of the highway patrol who arrests a motorist is not authorized to take the motorist's operator's license and retain it while the arrested motorist proceeds to drive his car to a magistrate's office, or other place, pursuant to the direction of the patrolman.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT OF 1953; VALIDITY OF
RELEASE BY GUARDIAN

2 November 1953

A release from damages to a minor is probably binding on the minor only when the guardian has obtained the approval of the court. Under the Motor Vehicle Safety and Financial Responsibility Act of 1953 the Commissioner should require such approval before accepting the release for purposes of not suspending the license of the other party to the accident.

MOTOR VEHICLES; REGISTRATION; SALE UNDER MECHANIC'S LIEN

2 November 1953

(1) The Department of Motor Vehicles should not issue title to a motor vehicle in the name of the alleged purchaser at a sale to enforce a lien for storage or for repairs until it receives evidence that such sale has been properly held.

(2) Discussion of the evidence to be required by the Department.

(3) A lien for repairs to a motor vehicle, such repairs being reasonable and being ordered by the beneficial owner of the vehicle, takes priority over a prior recorded conditional sale agreement or other security device.

MOTOR VEHICLES; RULES OF THE ROAD; FAILURE TO KEEP PROPER LOOKOUT
AS CRIMINAL VIOLATION

3 November 1953

Under certain circumstances failure to keep a proper lookout while operating a motor vehicle constitutes reckless driving, and if death proximately results the operator is guilty of manslaughter.

MOTOR VEHICLES; TITLE; TRANSFER

4 November 1953

When the registered owner of a motor vehicle delivers it to a used car dealer for sale on his account, and also delivers to the dealer a certificate of title endorsed in blank, the endorsement is not complete because the name of the assignee is not inserted. Such endorsement does not clothe the dealer with indicia of ownership. The registered owner may recover the vehicle from a mortgagee holding under an unauthorized mortgage executed by the dealer.

MOTOR VEHICLES; LICENSE TAXES; RECIPROCITY; EFFECT OF TON-MILE TAX

13 November 1953

When a foreign state grants license tax exemptions to registered North Carolina motor vehicle owners, North Carolina must grant a like exemption and cannot require a thirty-day permit simply because the foreign state also levies a ton-mile tax.

MOTOR VEHICLES; ACQUISITION OF LAND; LEASE FROM MUNICIPALITY

25 November 1953

A municipality may not lease to the State for 99 years at a nominal rental a portion of a municipal airport so as to enable the State to erect thereon a building for use by the Motor Vehicle Department.

MOTOR VEHICLES; 1953 FINANCIAL RESPONSIBILITY ACT; APPLICABILITY TO UNITED STATES EMPLOYEES

10 December 1953

Federal employees involved in accidents while operating Federal Government vehicles on government business are not exempted from the provisions of the Motor Vehicle Safety and Responsibility Act of 1953. However, suspension of licenses under this Act would not prevent such employees from operating government vehicles while engaged in government business, unless the Federal Government so prohibits.

MOTOR VEHICLES; 1953 FINANCIAL RESPONSIBILITY ACT; SECURITY DEPOSITS; AMOUNT OF PROPERTY DAMAGE

10 December 1953

Under the provisions of the Motor Vehicle Safety and Financial Responsibility Act of 1953, if A and B, not exempt from the Act, are involved in an accident not resulting in bodily injury or death, and if A sustains damage in excess of \$100.00 and if B sustains damage not in excess of \$100.00, the Commissioner must apply the Act and suspend the license of either or both of the operators if either or both fails to post security.

MOTOR VEHICLES, DRIVER'S LICENSE; FEE FOR REISSUANCE

17 December 1953

When a driver's license is suspended and is returned to the holder thereof at the end of the suspension period, no fee for such return is authorized by the statute. A two dollar (\$2.00) fee may be charged when

a license has been revoked and is reissued at the end of the revocation period. The two dollar (\$2.00) fee may also be charged when a different kind of license is issued or when a restricted license is replaced by an unrestricted license. The fee for replacement of a lost or destroyed license is fifty cents (\$.50). No fee may be charged when the licensee changes his or her name and procures a substitute license in the proper name.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT; OPERATORS OF
UNITED STATES MAIL TRUCKS

23 December 1953

The Financial Responsibility Act of 1953 excepts self-insurers but does not except the uninsured operator of a self-insurer's vehicle from the requirement that security be deposited when the circumstances of an accident are such as to require such deposit.

MOTOR VEHICLES; TITLE AND REGISTRATION; MARKING OF COMMON
CARRIERS APPLICABLE TO TAXI CABS

29 December 1953

Taxi cabs are not required to print the name and home address of the owner on the side thereof under the provisions of G. S. 20-101.

MOTOR VEHICLES; 1953 FINANCIAL RESPONSIBILITY ACT; STATUS OF
OPERATORS FOR SELF-INSURERS, HIGHWAY PATROLMEN AND
SCHOOL BUS DRIVERS

31 December 1953

The filing of a certificate of self-insurance by an employer is not sufficient by itself to exempt his employees from the provisions of the Motor Vehicle Safety and Financial Responsibility Act of 1953. Highway patrolmen and school bus drivers are not exempt from the provisions of the Act.

MOTOR VEHICLES; DRIVERS' LICENSES; APPEAL; SUSPENSION PENDING APPEAL

6 January 1954

The Department is not required to return an operator's license to the operator pending an appeal from the action of the Department.

MOTOR VEHICLES; MOTOR VEHICLE SAFETY AND FINANCIAL RESPONSIBILITY
ACT OF 1953; APPLICABILITY TO STATE EMPLOYEES; OPERATION OF
STATE-OWNED VEHICLES BY STATE EMPLOYEES DURING THE
PERIOD OF SUSPENSION

12 January 1954

State employees operating State-owned vehicles in the pursuit of State business are subject to the provisions of the 1953 Motor Vehicle Safety and

Financial Responsibility Act. Any such employee whose license is suspended under the Act is not entitled to continue operating such vehicles, except under the provisions of G. S. 20-8 (b) governing the temporary operation of road machinery.

MOTOR VEHICLES; MOTOR VEHICLE SAFETY AND FINANCIAL RESPONSIBILITY
ACT OF 1953; SELF-INSURERS

13 January 1954

A person may become a self-insurer under the Motor Vehicle Safety and Financial Responsibility Act of 1953 as to property damage without being a self-insurer as to personal injury damages.

LICENSE FEES OF COMMON CARRIER OF PASSENGERS BY MOTOR VEHICLES;
G. S. 20-87 (a)

25 January 1954

This letter involved the application of the 6% gross receipts tax to a variety of situations arising in the operation of buses by a common carrier of passengers. It is not practicable to attempt to digest it.

MOTOR VEHICLES; TITLE AND REGISTRATION; COMMON CARRIERS; DEFINITION
OF GROSS REVENUES; SEGREGATION CHARGE

26 January 1954

A segregation charge imposed by a common carrier for segregating parcels unloaded from a railroad freight car as an activity prior to loading the parcels on the carrier's trucks for transportation and delivery to their destination is a part of the gross revenue of the carrier and subject to the 6% gross revenue tax.

MOTOR VEHICLES; DRIVERS' LICENSES; CONVICTION, WHAT IS; NOLO
CONTENDERE; POLICY STATEMENT

28 January 1954

The Motor Vehicles Department is authorized to continue to suspend or revoke licenses, as the case may be, upon receiving a record of an operator's having entered a plea of nolo contendere to any of the charges falling within the provisions of G. S. 20-16.1, 20-17, and 20-28. The Department should not suspend under G. S. 20-16 any licenses merely because the operator has entered a plea of nolo contendere to a charge falling within the provisions of that section.

MOTOR VEHICLES; MOTOR VEHICLE SAFETY AND FINANCIAL RESPONSIBILITY
ACT OF 1953; POLICIES IN NONADMITTED INSURANCE COMPANIES

1 February 1954

Under the particular circumstances as outlined, an insurance policy in a company not admitted to do business in North Carolina may be filed as proof of financial responsibility and as satisfying the security exemption section under the Motor Vehicle Safety and Financial Responsibility Act of 1953.

MOTOR VEHICLES; MOTOR VEHICLE SAFETY AND FINANCIAL RESPONSIBILITY
ACT OF 1953; APPLICABILITY TO ACCIDENTS ON PRIVATE PROPERTY

8 February 1954

The Motor Vehicle Safety and Financial Responsibility Act of 1953 does not apply to accidents occurring on private property.

MOTOR VEHICLES; DIESEL FUEL TAX; WEIGHT STATION EMPLOYEE;
POWER OF ARREST

17 February 1954

A truck may not be held except pursuant to proper attachment proceedings, because of non-payment of the tax on diesel fuel used in the truck. Non-payment of such tax is a misdemeanor. Employees at an official weighing station do not have power to arrest for such offenses.

MOTOR VEHICLES; MOTOR VEHICLE SAFETY AND FINANCIAL RESPONSIBILITY
ACT OF 1953; POSTING BY MUNICIPALITY

24 February 1954

A deposit consisting of a bond or a type of transferable security posted by a city as security for one of its employees may be accepted by the Commissioner of Motor Vehicles as compliance with the Motor Vehicle Safety and Financial Responsibility Act of 1953, providing such deposit is dedicated to the payment of a judgment that might be recovered against the employee on account of the accident in question. No opinion is expressed as to the authority of the city to make such an expenditure.

MOTOR VEHICLES; MOTOR VEHICLE SAFETY AND FINANCIAL RESPONSIBILITY
ACT OF 1953; RESOLUTION OF STATE HIGHWAY AND PUBLIC
WORKS COMMISSION

26 February 1954

The resolution of the State Highway and Public Works Commission constitutes substantial compliance with the Motor Vehicle Safety and Financial Responsibility Act of 1953 as the same applies to employees and accidents provided for in the resolution.

MOTOR VEHICLES; MOTOR VEHICLE SAFETY AND FINANCIAL RESPONSIBILITY
ACT OF 1953; NOTICE OF CANCELLATION OF PROOF; PROCEDURE UPON
RECEIPT OF NOTICE OF IMMEDIATE CANCELLATION

26 February 1954

The Department may treat a notice of immediate cancellation of proof received from an insurer as the twenty-day notice required by the Motor Vehicle Safety and Financial Responsibility Act of 1953. The Department should notify both the insurer and the insured of such intended treatment.

MOTOR VEHICLES; MOTOR VEHICLE SAFETY AND FINANCIAL RESPONSIBILITY
ACT OF 1953; NECESSITY FOR RELEASES BY ALL PARTIES; NECESSITY
OF COURT APPROVAL OF GUARDIAN'S RELEASE

26 February 1954

Under the particular fact circumstances a release to be valid for purposes of the Motor Vehicle Safety and Financial Responsibility Act of 1953 must be executed by all parties involved in the accident. A release by the guardian of a minor must be approved by the court.

MOTOR VEHICLES; MOTOR VEHICLE SAFETY AND FINANCIAL RESPONSIBILITY
ACT OF 1953; HEARING

4 March 1954

An operator aggrieved by an order of the Commissioner of Motor Vehicles under the Motor Vehicle Safety and Financial Responsibility Act of 1953 is entitled to a hearing by the Department, which hearing must be given within a reasonable time and at a reasonable place. No particular form is required.

MOTOR VEHICLES; GROSS REVENUE TAX; DEDUCTION FOR GOVERNMENT
FREIGHT HAULED UNDER LEASE AGREEMENT

11 March 1954

In computing the tax base for the gross revenue tax under G. S. 20-89 of the motor vehicle laws, the common carrier cannot deduct the revenue derived from shipment of government freight and also deduct payments made under lease agreement for the hauling of that same freight.

MOTOR VEHICLES; DRIVER'S LICENSE; SPEEDING

21 April 1954

The provision in G. S. 20-16.1 for mandatory suspension of a driver's license for speeding does not apply unless the vehicle was being driven in excess of the forty-five mile limit or the fifty-five mile limit.

MOTOR VEHICLES; RULES OF THE ROAD; HIT AND RUN STATUTE; DOGS

21 April 1954

The hit and run provisions of G. S. 20-166 (b) apply to a hit and run of a dog which has been listed for taxes.

MOTOR VEHICLES; THE SAFETY AND FINANCIAL RESPONSIBILITY
ACT OF 1953; RELEASE OF JOINT TORTFEASOR

23 April 1954

When a passenger releases the operator of the car in which he was riding from liability on account of an accident, such release does not automatically discharge the operator of the other car involved in the accident for the purpose of satisfying the security provisions of the Safety and Financial Responsibility Act of 1953.

MOTOR VEHICLES; MOTOR VEHICLE SAFETY AND FINANCIAL RESPONSIBILITY
ACT OF 1953; SECURITY REQUIREMENT; INJURY TO
UNEMANCIPATED MINOR CHILD

23 April 1954

The Commissioner of Motor Vehicles has the authority to recognize the principle of law that an unemancipated minor child living in the parents' household cannot sue the parent in tort. The Commissioner can therefore determine that no judgment could be obtained against the parent by the child and that the parent would not be required to post security under the Motor Vehicle Safety and Financial Responsibility Act of 1953 to cover injuries by the parent to the child.

MOTOR VEHICLES; MOTOR VEHICLE SAFETY AND FINANCIAL RESPONSIBILITY
ACT OF 1953; COVERAGE OF OPERATOR'S POLICY

29 April 1954

An operator's policy submitted by a non-owner is sufficient proof of financial responsibility under the Motor Vehicle Safety and Financial Responsibility Act of 1953 and does not cover accidents caused by such person after he has owned a motor vehicle for more than thirty days. When an operator filing such policy acquires a motor vehicle, he should then file an owner's policy as proof.

MOTOR VEHICLES; RULES OF THE ROAD; ACCIDENT REPORTING;
DEFINITION OF "COLLISION."

3 May 1954

The collision reporting provisions of G. S. 20-166.1 cover collisions with stationary objects but do not cover mere overturns of automobiles without some other collision.

MOTOR VEHICLES; OVERLOADING; 5% TOLERANCE APPLICABLE TO
LIGHT TRAFFIC HIGHWAY

14 May 1954

The 5% tolerance allowed by G. S. 20-118 in determining gross weight overloading penalties applies to a posted light traffic highway.

MOTOR VEHICLES; TITLE AND REGISTRATION; OVERLOADING

10 June 1954

Euclid earth movers are exempt from motor vehicle registration but are subject to the overloading penalties of G. S. 20-118. Under the circumstances described, these vehicles have violated the overloading provisions when removing earth from a grading job to a nearby location by means of the highway.

MOTOR VEHICLES; HIGHWAY PATROL; JURISDICTION IN NATIONAL
PARKWAYS AND NATIONAL FORESTS

11 June 1954

The State Highway Patrol has jurisdiction to police the highways in the Great Smoky Mountains National Park, the Blue Ridge Parkway and the National Forests located in this state.

DIGEST OF
OPINIONS TO COMMISSIONER OF REVENUE

FRANCHISE TAX; UNCLAIMED WINNINGS AT DOG-RACING TRACKS

3 July 1952

Sums represented by unredeemed winning tickets in a lawfully operated pari-mutuel system pass to the University of North Carolina as derelict property five years after such tickets become redeemable. The right to recover such sums from the corporation operating such system is an accrued legal liability of such corporation. These sums are to be deducted from the corporation's assets in determining its surplus and net profits for franchise tax purposes.

SALES TAX; MILL MACHINERY AND MILL MACHINERY PARTS

9 July 1952

When a manufacturing industry is entitled to pay only the wholesale rate of tax with respect to certain mill machinery parts and accessories, this right is not lost merely by reason of the fact that such manufacturing industry makes its purchases through a bona fide agent.

INCOME TAX; DEDUCTIONS; LIVING EXPENSES OF RESIDENT WORKING
IN FOREIGN COUNTRY

16 July 1952

A resident who works temporarily in a foreign country must report his income therefrom to North Carolina, unless that foreign country levies an income tax on that income. He is not entitled to deduction for personal living expenses.

INHERITANCE TAX; CLAIM FOR SERVICES RENDERED WIFE AS ASSET
OF HUSBAND'S ESTATE

18 July 1952

It is presumed that husband works for his wife gratuitously, and evidence must overcome this presumption before a claim against the wife for the value of the husband's services can be included in his gross estate for inheritance tax purposes.

SALES TAX; OUT OF STATE SALES; CASKETS

18 July 1952

The application of sales and use tax laws to the sales and use of caskets is the same as in the case of other tangible personal property.

SALES TAX AND USE TAX; SHIPMENTS FROM WITHOUT THE STATE; ORDERS
PLACED BY BROKERS AND BY N. C. MERCHANTS

21 July 1952

When an out of state dealer ships personal property F. O. B. an out of state station, to a North Carolina vendee pursuant to a mail order received through a broker or from a North Carolina merchant, such out of state dealer must collect the North Carolina use tax and remit the same to the Department of Revenue.

SALES AND USE TAX; OUT OF STATE SALES TO N. C. PURCHASER; DUTY OF
OUT OF STATE SELLER TO COLLECT USE TAX

22 July 1952

The Use Tax Article of the N. C. Revenue Act makes it the duty of an out of state vendor of tangible personal property to collect and remit to this State the use tax on such property shipped into this State for use, storage or consumption in this State. A similar provision of a use tax statute of another state has been held constitutional, by the United States Supreme Court in the case of GENERAL TRADING COMPANY v. TAX COM. 322 U S 335; 88 L. Ed. 1309 (1944).

INCOME TAX; GROSS INCOME; CORPORATION DEALING IN OWN STOCK;
PROFIT FROM SALE OF TREASURY STOCK

22 July 1952

When a corporation buys its own stock, holds it in its treasury as an asset, and later sells it at a profit, such gain is taxable income, the fact that such purchase was made for resale to employees being immaterial.

INCOME TAX; DEDUCTIONS; SALARIED CORPORATION OFFICER; USE OF CAR ON
BUSINESS TRIPS; ENTERTAINMENT; ADVERTISEMENT; CLUB DUES

23 July 1952

Expenses incurred exclusively for genuine business purposes are, as a general proposition, deductible for income tax purposes as ordinary and necessary business expenses. When claims for such deductions include club dues and entertainment expenses, they should be scrutinized carefully and details with respect to all such claims should be furnished before any such claim is allowed. Certainly such expenses are not deductible when incurred merely to increase the number of one's friends and acquaintances in the hope that some of them will prove to be future customers or clients.

GIFT TAX; ASSESSMENT AFTER TEN YEARS FROM DATE OF GIFT

29 July 1952

Failure of a Certified Public Accountant to report a gift when that accountant is well versed in North Carolina Tax Laws probably does not constitute provable fraud. Absent a false or fraudulent return or a failure to file a return, gift tax assessments must be made within three years from the filing of the return.

SALES & USE TAX; TERRITORY WITHIN FEDERAL JURISDICTION

4 August 1952

Pursuant to an Act of Congress known as the Buck Amendment, a state has jurisdiction and power to levy and collect sales and use taxes in any Federal area in the state to the same extent and with the same effect as though such area was not a Federal area.

SALES & USE TAX; ADVERTISING SERVICE FURNISHED BY
OUT OF STATE COMPANY

5 August 1952

When an out of state firm prepares direct mail advertisements for a North Carolina retailer and mails such advertisements from out of state direct to customers of the retailer, such out of state company is furnishing a service rather than selling tangible personal property, and the sale of such service is not subject to the North Carolina use tax.

INCOME TAX; DOMESTIC CORPORATIONS; DEDUCTIONS; INCOME IN
OTHER STATES

5 August 1952

Domestic corporations having an established business in another State, or investment in property in another State, may deduct the net income from such business or property if the said net income is taxed under an income tax levied by the State or States in which the business or property is located.

INCOME TAX; CORRECTION OF FEDERAL RETURN; SECTION 334; RIGHT OF
COMMISSIONER TO ADOPT FEDERAL FIGURES

6 August 1952

The Federal Government made certain changes in the net income of certain taxpayers in accordance with a consent judgment of the Tax Court of the United States. Pursuant to Section 334 of the Revenue Act, the Commissioner of Revenue proceeded to determine the correct net income of the taxpayers for the years in question and he made this determination by adopting the findings contained in the consent judgment above referred to. The taxpayers contend that they should be permitted to introduce independent evidence to show that the figures so arrived at were incorrect. Irrespective of whether the taxpayers do or do not have a right to submit independent evidence, it is my opinion that the Commissioner of Revenue is entirely justified in adopting the figures set forth in the consent judgment and that the act of consenting to such judgment constitutes at least an admission by the taxpayers that the facts recited in said judgment are correct.

INCOME TAX; EXEMPTIONS; DEDUCTIONS; CHARITABLE ORGANIZATIONS

6 August 1952

Charitable organizations, no part of the net earnings of which inures to the benefit of any private stockholder or individual, are exempt from the payment of income tax and donations to such organizations are deductible for income tax purposes.

INHERITANCE TAXATION; NON-RESIDENT DECEDENT'S INTEREST IN
PARTNERSHIP

7 August 1952

A non-resident decedent's interest in a North Carolina financing partnership is subject to the North Carolina inheritance tax.

INHERITANCE TAXES; REFUND AFTER THREE YEARS BASED ON DEDUCTION
FOR LITIGATION EXPENSES

7 August 1952

A refund of inheritance taxes based on a deduction for litigation expenses which claim for refund was made more than three years after the payment of the tax is not proper.

SALES & USE TAX; RENTAL OF SERVICE STATION

8 August 1952

Technical leases of service stations and service station pumps, which leases are without substance and which constitute in essence a loan without consideration, do not relieve the lessor from liability for the use tax on the pumps and other equipment purchased outside the State and used in this State.

INCOME TAX; GROSS INCOME; EXEMPTIONS; SERVICE CORPORATION

8 August 1952

The income of North Carolina corporations is subject to income tax unless it is specifically exempted therefrom.

INCOME TAXES; COMPENSATION FOR SERVICES RENDERED IN NORTH
CAROLINA AND OTHER STATES

12 August 1952

When a resident officer of a North Carolina corporation travels to another state on corporate business only on special occasions, no part of

his salary is attributable to the other state for income tax purposes, the entire salary being taxable in North Carolina. When an officer's salary is properly attributable both to North Carolina and to another state, it is not proper to make the allocation for his own income tax purposes on the basis of the corporation's gross receipts from the several states.

MOTOR FUELS; ROAD TAX; INSPECTION FEE; FUEL PURCHASED IN
ANOTHER STATE

13 August 1952

The Commissioner of Revenue may, in his discretion, waive penalties for nonpayment of the gasoline road tax. Interest may be charged upon such tax only from July 1, 1951. The motor fuel inspection fee does not apply to motor fuel purchased outside of North Carolina even though such fuel is used in operating a truck over the highways of this State.

INCOME TAX; ALLOCATIONS; DOING BUSINESS AND SALES FACTOR

14 August 1952

Shipments to North Carolina customers from North Carolina inventories upon orders solicited by independent brokers and accepted by the taxpayer's many offices located outside of North Carolina, constitute North Carolina sales for purposes of computing the taxpayer's sales factor.

INCOME TAX; ALLOCATION; DOING BUSINESS AND SALES FACTOR

14 August 1952

Goods shipped from a North Carolina public warehouse by a foreign corporation pursuant to contracts of sale executed outside of North Carolina, constitute North Carolina sales for the purpose of determining the sales factor in computing a foreign corporation's income tax liability.

SALES AND USE TAX; PAYMENT OF TAX ON EXEMPT ARTICLES; ASSESSMENT
OF TAX ON ARTICLES WHERE MERCHANT FAILED TO COLLECT;
MEASURE OF TAX LIABILITY

14 August 1952

Under the provisions of Sections 401 and 405 (b) of the Revenue Act, a tax of 3% "of the total gross sales of the business of every such retail merchant" is levied upon the retail merchant. The sole question presented with respect to any sales tax period is whether the taxpayer has paid to the State for such period a sum of money which equals his total sales tax liability for such period. It is immaterial, so long as he makes the payment, whether he, in fact, absorbed the tax or paid it out of a savings account or paid it from any other source.

INCOME TAX; ALLOCATIONS; DOING BUSINESS AND SALES FACTOR

14 August 1952

Interstate sales made directly to consumer agents in North Carolina by a foreign corporation without the mediation of an agency, branch or office located in North Carolina, are not included in the North Carolina sales factor.

SALES TAX; SENSITIZED PAPER

25 August 1952

1. For sales and use tax purposes there is no distinction between a printer who purchases paper, prints thereon a letterhead, and delivers it to his customer for a price, and a blue printer who purchases sensitized paper, produces thereon words or a design, and delivers it to his customer for a price.

2. For sales and use tax purposes there is no distinction between a photographer who purchases sensitized paper, produces thereon a finished picture, which he delivers to his customer for a price, and a blue printer who purchases sensitized paper, produces thereon words or a design and delivers it to his customer for a price.

INCOME TAXES; DEDUCTIONS; ALLOCATION; DOMESTIC CORPORATIONS;
ESTABLISHED BUSINESS IN FOREIGN STATE

27 August 1952

The maintenance of a fishing boat by a domestic corporation in waters off the shore of a foreign state does not constitute an established business or investment in property in such state so as to permit a deduction from income under Section 322 (10) (a) of the Revenue Act.

INCOME TAXES; GROSS INCOME; DEDUCTIONS; ALLOCATION OF PAYMENTS
FOR SUPPORT AND RELINQUISHMENT OF MARITAL RIGHTS

3 September 1952

When a separation agreement provides for lump sum alimony in extinguishment of support rights and marital rights, an allocation must be made to determine the sum deductible by the husband for income tax purposes and includible by the wife.

INCOME TAX; DEDUCTIONS; ALLOCATION; DETERMINATION OF DEDUCTION BY
A DOMESTIC CORPORATION OF INCOME EARNED IN ANOTHER STATE

3 September 1952

To determine the ceiling of the domestic corporation's deduction under Section 322, subsection 10, subsection (a), the foreign corporation formula applicable to the type of business done in the foreign state should be used.

SALES AND USE TAX; BUILDING MATERIALS; EXEMPTIONS;
PLYWOOD NOT EXEMPT

5 September 1952

Inasmuch as plywood is not among the enumerated exemptions, the tax imposed pursuant to Section 427 of the Revenue Act is applicable thereto even when it is used as a substitute for rough and dressed lumber.

SALES AND USE TAX; PAYMENT OF TAX ON EXEMPT ARTICLES; ASSESSMENT
OF TAX ON ARTICLES WHERE MERCHANT FAILED TO COLLECT;
MEASURE OF TAX LIABILITY; REFUND

5 September 1952

Under the provisions of Section 401 and 405 (b) of the Revenue Act, a tax of 3% "of the total gross sales of the business of every such retail merchant" is levied upon the retail merchant. The sole question presented with respect to any sales tax period is whether the taxpayer has paid to the State for such period a sum of money which equals his total sales tax liability for such period. It is immaterial, so long as he makes the payment, whether he, in fact, absorbed the tax or paid it out of a savings account or paid it from any other source, and if he has remitted too much to the State, he is entitled to a refund.

LICENSE TAX; DEALERS IN HORSES AND MULES; PURCHASED FOR RESALE
OUTSIDE STATE; SECTION 115

5 September 1952

A mule dealer who purchases horses or mules in this State for the purpose of resale is subject to the license tax imposed pursuant to G. S. 105-47 irrespective of whether the resales are to be made within or without this State.

INHERITANCE TAXES; SALE OF REALTY TO MAKE ASSETS;
EFFECT ON TAX LIEN

17 September 1952

The Court may order a decedent's real property sold to make assets, and the inheritance tax lien terminates on the property and affixes to the proceeds.

INCOME TAX; DOMESTIC CORPORATIONS; NET LOSS IN ANOTHER STATE
LEVYING AN INCOME TAX

19 September 1952

1. When a domestic corporation earns net income both in North Carolina and in State A, which has an income tax law, it pays an income tax to North Carolina on its entire net income unless it has actually paid State A an income tax. In the latter case, it deducts from total net income that part of the net income earned in an established business in State A and on which it paid State A a tax.

2. If a domestic corporation, having an established business in State A, sustains a net loss in State A, it may deduct such loss from the net income earned in North Carolina and elsewhere in computing its income tax liability to North Carolina.

MOTOR FUELS TAX; SECURITY; U. S. BONDS

23 September 1952

Two and one-half per cent Treasury Bonds of 1967-72 are not negotiable. Whether they should be accepted as security for payment of the motor fuels tax is a matter of policy to be determined by the Commissioner of Revenue.

LICENSE TAXES; EMPLOYMENT AGENCIES; SECTION 154

23 September 1952

A person who engages in the business of securing employment for other persons is subject to the North Carolina employment agency license tax even though he claims that he does not perform his services for a fee but, in fact, exacts a "donation" because the statute is applicable to any person operating an employment agency for any type of compensation.

SALES AND USE TAX; JEWELRY REPAIRS; SUBLEASING OF REPAIR BUSINESS

23 September 1952

"A" is a retail jewelry store. "A" does not maintain a repair department as such but it accepts merchandise for repair. "A" then turns over to "B" the merchandise to be repaired and "B" does the actual repair work. "B" then returns the repaired merchandise to "A" and "A" pays "B" for the work. "A" then returns the merchandise to the customer and charges such customer directly for the repair work. It does not appear whether the price charged the customer by "A" is the same or more than that charged "A" by "B." However, this would seem to be immaterial.

It is also stated that it has been the administrative practice of the Revenue Department to regard 10% of a jewelry repair job as representing parts and 90% as representing labor.

Under the circumstances set out above, it is my opinion that "B" is making a wholesale sale of parts to "A" and that "B" would be subject to sales tax on 10% of the price charged "A" for repairs and such tax would be levied at the wholesale rate. "A," in turn, would be liable for sales tax at the retail rate on 10% of the amount it charged customers for repair work.

INTANGIBLES TAX

23 September 1952

1. When a manufacturer of automobiles ships a car to a dealer under a bill of lading to the dealer's order and the dealer thereupon gives a note for the purchase price which does not draw interest until the expiration of the anticipated time required for transit of the car to the dealer, the note is immediately an obligation of the dealer and must be included in determining the intangibles tax to be paid by the holder.

2. Paid installments must be deducted from the face value of a note in determining its value for intangibles tax purposes.

3. When the face value of an installment note includes the interest not yet due such interest must be deducted in determining the value of the note for intangibles tax purposes.

INCOME TAX; EXEMPTIONS; COUNTRY CLUB; CHARTER PROVISIONS FOR PAYMENT OF DIVIDENDS

(2) FRANCHISE TAX; EXEMPTIONS COUNTRY CLUB; CHARTER PROVISIONS FOR PAYMENT OF DIVIDENDS

25 September 1952

A Country Club is not exempt from the State income and franchise tax laws when any part of the net earnings inure to the benefit of any private stockholder or member.

INCOME TAXES; GROSS INCOME; CONTRACT TO RECEIVE PAYMENT IN TWO YEARS; TIME OF REPORTING

29 September 1952

A taxpayer contracts to sell timber, the contract providing that a deed for one-half the timber shall be delivered in one year, one-half of the purchase price being paid in that year. A deed for the other half will be delivered in the following year, with the remainder of the purchase price being paid at that time. The taxpayer must report these payments only in the year in which received.

INCOME TAX; DEDUCTIONS; DEPRECIATION DEDUCTION WHEN
INCOME NOT REPORTED

30 September 1952

A taxpayer taking a depreciation deduction must reflect in his return the use of that property in his trade or business, generally either through operation or rental.

SALES TAX; COLLECTION OF TAXES; INSOLVENCY;
PRIORITY OF FEDERAL TAX CLAIM

1 October 1952

When a corporation makes an assignment for benefit of creditors, claims of the federal government for unpaid taxes take priority over a docketed certificate of tax liability for state taxes insofar as the proceeds of the taxpayer's personal property are concerned.

INCOME TAXES; ADMINISTRATION; FAILURE OF TAXPAYER TO RECEIVE
30-DAY LETTER; STATUTE OF LIMITATIONS

2 October 1952

A taxpayer is not notified within the meaning of Section 912½ of the Revenue Act by the mailing of a 30-day letter when he does not receive that letter.

INCOME TAXES; ADMINISTRATION; RELATIVE PRIORITY OF FEDERAL AND
STATE TAX LIENS; BANK DEPOSITS

2 October 1952

When the United States files a notice of tax lien prior to the docketing of a Certificate of Tax Liability, and the State garnishees a bank deposit prior to the service of the Federal Notice of Levy, the United States has priority in the bank deposits.

INCOME TAX; RETIREMENT PAY; GROSS INCOME; EXEMPTIONS;
RETIREMENT PAY OF ARMY OFFICER

2 October 1952

The retirement pay of an army officer is subject to the N. C. Income Tax.

INCOME TAXES; GROSS INCOME; DEDUCTIONS; NON-RESIDENT EARNING
PERSONAL SERVICES INCOME IN NORTH CAROLINA

2 October 1952

A resident of Georgia who teaches in North Carolina is not liable to North Carolina for income taxes on the income derived from this teaching in North Carolina.

INCOME TAX; DEDUCTIONS; NET ECONOMIC LOSS; REDUCTION FOR
DISABILITY PAYMENTS

2 October 1952

Disability payments may be included to adjust a net economic loss.

INCOME TAX; GROSS INCOME; INSTALLMENT SALES; DEATH OF TAXPAYER

6 October 1952

Unreceived installments must be included in the final return of the installment payment decedent taxpayer.

INCOME TAX; BASIS; GIFT OF CORPORATE STOCK

7 October 1952

The basis of property acquired by gift is the fair market value of such property at the time of the gift.

INCOME TAX; GROSS INCOME; EXEMPTIONS; CHARITY HAVING UNRELATED
BUSINESS INCOME

7 October 1952

Unrelated Business Income is not taxed by North Carolina.

INHERITANCE TAXES; LIFE INSURANCE PROCEEDS; BENEFICIARY PREDECEAS-
ING INSURED; BENEFICIARY CONTROLLING INCIDENTS OF OWNERSHIP

9 October 1952

When a wife procures a life insurance policy on her husband's life and she retains the right to change beneficiaries, assign the policy, and obtain the cash surrender value, as well as all other rights and privileges, the cash surrender value of the policy must be included in the wife's gross estate when she predeceases her husband.

INCOME TAX; CONTRIBUTIONS; EXEMPTIONS; FRANCHISE TAX;
EXEMPTIONS

13 October 1952

If a corporation is organized to operate a swimming pool and other recreational facilities for admission to which it will make a charge, it is not engaged in a charitable activity even though the profits from its operation will be devoted to public or charitable purposes. Such corporation is not exempt from income and franchise tax liability.

SALES AND USE TAX; PROPERTY PURCHASED FOR USE IN ANOTHER STATE
AND LATER BROUGHT TO NORTH CAROLINA

14 October 1952

When property is purchased without the State for use without the State and is later brought into the State, no use tax is due.

LICENSE TAXES; CONTRACTORS AND CONSTRUCTION COMPANIES; JOINT
BIDDERS; DIFFERENT COMBINATION OF BIDDERS; SECTION 122

14 October 1952

A project license secured by certain joint bidders pursuant to Section 122 (f) of the Revenue Act is not valid for any other group of joint bidders if the new group contains fewer or more or different bidders than the original joint bidders.

INCOME TAX; DEDUCTIONS; GROSS INCOME; TREATMENT OF DISALLOWED
SALARY DEDUCTION AS DIVIDEND

17 October 1952

When a corporation pays its sole stockholder compensation for services as an officer, and part of that compensation is disallowed as excessive, the corporation cannot retroactively declare the sum a dividend. In order to have a dividend, there must be a declaration of dividend.

INCOME TAXES; EXTENT OF REOPENING BASED ON FEDERAL AUDIT;
SECTION 334

5 November 1952

When an assessment is made pursuant to an R. A. R., and it is later determined that a refund is due, payment of the refund is not barred by the original three year statute of limitations.

SALES AND USE TAX; EXEMPTIONS; DIESEL FUEL

5 November 1952

Sales of motor fuels are exempt from the sales tax when the gasoline gallonage tax has been paid or when the sales are made to farmers to be used by them for any farm purpose other than preparing food, heating dwellings, and other household purposes.

SALES AND USE TAX; SALES OF ITEMS OF COLLATERAL EQUIPMENT UNDER
COST-PLUS-A-FIXED-FEE CONTRACT NOT SALES FOR RESALE

6 November 1952

In the absence of special provisions, purchases of materials by a contractor to be used in the fulfillment of a cost-plus-a-fixed-fee contract are not regarded as purchases for resale and, therefore, the sales to the contractor are subject to the sales tax at the retail rate and not at the wholesale rate.

SALES AND USE TAX; PURCHASE BY CONTRACTOR FOR MATERIALS USED
IN PERFORMING CONTRACT; COST-PLUS CONTRACT;
MILL MACHINERY

12 November 1952

In the absence of special contract provisions creating an agency relationship, a purchase of materials by a contractor for use in performing a cost-plus-a-fixed-fee contract is not regarded as a matter of law as being a purchase by the party for whom the contract is being performed. Therefore, under such circumstances sales of mill machinery and mill machinery parts to a contractor to be used in fulfilling a contract for a manufacturing plant would not be considered as purchases by the manufacturing plant and such sales would be subject to the retail rate of sales tax.

INCOME TAX; DEDUCTIONS; CONTRIBUTIONS; DEDUCTIONS ON ACCRUAL BASIS

12 November 1952

A corporation reporting its income on the accrual basis would be authorized to deduct contributions authorized by the directors during the income year even though such contributions are not, in fact, paid until some date subsequent to the income year with respect to which they are reported.

INCOME TAX; BASIS; GROSS INCOME; COMPENSATION FOR CONDEMNATION OF
PART OF PROPERTY

16 December 1952

A taxpayer acquired in 1922 a house and lot valued at \$9,000. In 1952 the city condemned a strip on the edge of this property and awarded the taxpayer \$3,500.00 as compensation therefor. In order to determine the gain for income tax purposes, it is necessary to determine the total value of the property at the time of the condemnation and then determine what proportion of that value the \$3,500.00 represents. A similar proportion of the \$9,000 cost value will constitute the basis, and the difference between the basis and \$3,500.00 will constitute taxable income.

INCOME TAX; EXEMPTIONS; COUNTRY CLUB

17 December 1952

Ordinarily the income of the usual country club is exempt from State income taxation when the earnings of the club do not inure to the benefit of any private stockholder or member.

INCOME TAX; ADMINISTRATION; RIGHT OF REVIEW AFTER ASSESSMENT
AND DOCKETING OF CTL

22 December 1952

A taxpayer may reopen the case of an income tax assessment against him by making application to the Commissioner of Revenue at any time within three years from the time of filing his tax return or within three years from the date of the notice of assessment of any additional tax. The docketing of a Certificate of Tax Liability does not bar this right.

INCOME TAXES; GROSS INCOME; TRUST AND ESTATES; RESIDENT RECEIVING
INCOME FROM NON-RESIDENT TRUST

23 December 1952

A North Carolina resident receiving income from a Mississippi trust is taxable on the income to North Carolina.

INHERITANCE TAXES; EQUITABLE CONVERSION; INCLUSION OF REAL
PROPERTY LOCATED IN NORTH CAROLINA SUBJECT TO
CONTRACT TO SELL

23 December 1952

When a nonresident dies leaving a contract to sell real property located in this State, the real property is subject to North Carolina inheritance tax, the doctrine of equitable conversion not applying.

INCOME TAX; ADMINISTRATION; SECTION 334; STATUTE OF LIMITATIONS;
EFFECT OF WAIVER TO FEDERAL GOVERNMENT

31 December 1952

Under the provisions of Section 334 of the Revenue Act, the Commissioner of Revenue may reopen and make changes in an income tax assessment after receiving report of a change made in the Federal income tax assessment by a competent officer of the United States even though the change in the Federal assessment was possible only by reason of the taxpayer's waiver of the Federal statute of limitations and even though such Federal action would have been invalid in the absence of such waiver.

GIFT TAXES; EFFECT OF RENUNCIATION OF TESTAMENTARY DEVISE

7 January 1953

When a devisee renounces a life interest, such renunciation does not constitute a gift to the remainder men for gift tax purposes.

FRANCHISE TAX; EXEMPTIONS; FOREIGN CORPORATIONS; CO-OPS

9 January 1953

A foreign co-operative marketing organization is not exempt from the North Carolina franchise tax.

INTANGIBLES TAX; ACCOUNTS PAYABLE; DEPOSITS FOR BOTTLES
WITH BOTTLING COMPANY

26 January 1953

Deposits for bottles made with bottling companies do not ordinarily constitute "accounts payable" within the meaning of Section 703 of the Revenue Act to the end that they would be deductible from accounts receivable for intangibles tax purposes. The necessity for repayment of the deposits is a contingent liability and is not one with respect to which a satisfactory showing can be made that the taxpayer will actually be compelled to pay the liability.

INCOME TAXES; GROSS INCOME; ESTATES AND TRUSTS; RECEIPT OF
INCOME FROM FOREIGN ESTATE

28 January 1953

When income from a foreign estate becomes distributable to a resident beneficiary at any time during the income year, the beneficiary is taxable on that income notwithstanding the fact that such income may not have been distributable at the exact time the estate received it.

INCOME TAX; STATUTE OF LIMITATIONS; SECTION 334; VOLUNTARY FEDERAL
PAYMENT AFTER BAR OF FEDERAL STATUTE OF LIMITATIONS

19 February 1953

After the statute of limitations has barred the right of the Commissioner of Revenue to make an income tax assessment against a taxpayer, the fact that such taxpayer voluntarily files an amended return with the Federal Government with respect to such barred year does not furnish any authority to the Commissioner of Revenue to make an additional assessment. The situation is different, however, when the Federal Government itself makes an assessment and the taxpayer accedes thereto or, in effect, waives

the bar of the statute of limitations. In this latter case, the change is, in fact, made by the Federal Government and under the provisions of Section 334 of the Revenue Act the Commissioner of Revenue may then make a new assessment even though such assessment would otherwise have been barred by the State statute of limitations.

(1) INCOME TAX; DEDUCTIONS; DOMESTIC CORPORATIONS; INCOME
EARNED IN ANOTHER STATE

(2) INCOME TAXES; DEDUCTIONS; PARTNERSHIP; INCOME EARNED IN
ANOTHER STATE

25 February 1953

The fact that a North Carolina corporation employs a salesman in another state and such salesman uses his home as a base for operations would not constitute maintaining an office or plant or established business in such other state and, therefore, income earned in such other state would not be deductible in this State for income tax purposes even though such other state levied an income tax on the income earned by the corporation in such other state. The same would be true in the case of a North Carolina partnership which employed a salesman in another state.

BAD CHECKS; CHECKS RETURNED ON ACCOUNT OF INSUFFICIENT FUNDS

12 February 1953

The Commissioner is without authority to waive or reduce the 10% penalty imposed by statute with respect to checks given in payment of State taxes which are returned unpaid because of insufficient funds.

INCOME TAXES; DEDUCTIONS; LOSS ON COOPERATIVE TELEPHONE COMPANY

4 March 1953

A loss on a community telephone company is not deductible by an individual for income tax purposes.

INCOME TAXES; GROSS INCOME; ADMINISTRATION; RE-OPENING RETURN AS
RE-OPENING FOR ALL ITEMS (SECTION 334 OF THE REVENUE ACT)

10 March 1953

When a return is re-opened pursuant to an R. A. R., the taxpayer can present evidence bearing on items other than those covered in the R. A. R.

INCOME TAXES; DEDUCTION; TIME FOR DEDUCTING INVENTOR'S EXPENSES

10 March 1953

An inventor can deduct his expenses only in the year in which he sells or abandons the invention.

INCOME TAXES; GROSS INCOME; RESIDENT REMOVING FROM STATE DURING INCOME YEAR

13 March 1953

A resident of North Carolina earns income from personal services rendered in North Carolina. During the income year he becomes a resident of Virginia and earns income from personal services rendered in Virginia. He is required to report to North Carolina the income received from personal services rendered in North Carolina while he was a resident of North Carolina. Section 325 of the Revenue Act is inapplicable.

INCOME TAX; DEDUCTIONS; CONTRIBUTIONS; BUSINESS LOSSES

24 March 1953

A loss sustained by reason of a loan not entered into for profit is not deductible for income tax purposes.

GIFT TAXES; ANNUITY CONTRACTS; CONSIDERATION; COMPUTATIONS;
STATUTORY TABLES

30 March 1953

G. S. 105-195 requires that certain statutory tables be used in making actuarial computations, and the statute does not permit the substitution of insurance company tables.

INCOME TAX; FOREIGN CORPORATIONS; SALES CONFIRMED IN
ANOTHER STATE

1 April 1953

When a foreign corporation, whose principal business in North Carolina is selling, employs a salesman who solicits orders which he sends to the company's office in another state for acceptance or rejection, a sale pursuant to such order is made in the other state and is not included in the numerator of the sales factor used in allocating the corporation's income to North Carolina for tax purposes. It is immaterial that the salesman resides in North Carolina.

INCOME TAXES; GROSS INCOME; DEDUCTIONS; RECIPROCITY WITH
NEW YORK; SECTION 325 (2)

1 April 1953

New York apparently does not extend the reciprocity required by Section 325 (2) of the Revenue Act.

INHERITANCE TAXES; COMPUTATION OF TAX WHEN A LIFE TENANT
RENOUNCES

1 April 1953

When a life estate granted in a will is renounced such renounced devise should be ignored in computing the inheritance tax and the computation should be based on the ultimate devolution of the property.

INCOME TAX; GROSS INCOME; SALE OF STOCK; COVENANT NOT TO COMPETE

7 April 1953

Several years ago the taxpayer and several others entered into a contract whereby they sold all of the stock in a certain news publishing company and also covenanted not to compete in a certain described area for a period of ten years. Separate consideration was set forth with respect to the payment for the stock and with respect to the covenant not to compete.

The question arises, for income tax purposes, whether payments for the covenant not to compete, in fact, constitute payments for stock. Inasmuch as separate consideration is specified with respect to the two, that is, the purchase price of the stock and compensation for the agreement not to compete, the installments of such compensation for the agreement not to compete must be treated as ordinary income and not as a payment for stock.

INCOME TAXATION; DEDUCTIONS; CARRY-OVER LOSS; RIGHT OF RESULTING
CORPORATION TO DEDUCT PRIOR LOSS OF MERGING CORPORATION

7 April 1953

When two corporations merge, the resulting corporation is not entitled to deduct as a carry-over loss a loss theretofore sustained by one of the corporations in a year prior to the merger.

INCOME TAXES; GROSS INCOME; PAYMENTS AS COMMISSIONED OFFICER IN
THE UNITED STATES PUBLIC HEALTH SERVICE

10 April 1953

Income received as a commissioned officer in the United States Public Health Service is not gross income for the North Carolina Income Tax Law.

INCOME TAXES; GROSS INCOME; FELLOWSHIP OF AMERICAN CANCER SOCIETY

10 April 1952

Funds received from a Fellowship of the American Cancer Society do not constitute gross income.

INCOME TAX; DEDUCTIONS; NET ECONOMIC LOSS; PREMIUM ON ISSUANCE OF CORPORATE STOCK

21 April 1952

Premium from the sale of stock on its original issuance does not constitute income diminishing a net economic loss, when the corporation does not deal in its own stock as it would in the stock of another corporation and when the stock sold is not treasury stock.

SALES AND USE TAX; EXEMPTIONS; EDUCATIONAL INSTITUTIONS; BUILDING MATERIALS; MATERIALS NOT INCORPORATED INTO STRUCTURE; SECTION 406(q)

24 April 1952

Sales of building materials to contractors to be used in construction work for educational institutions are exempt from the sales tax, but tools and other supplies used in the process of construction which do not become a part of the building being constructed are not exempt.

INCOME TAXES; DEDUCTIONS; CASUALTY LOSS; YEAR OF REPORTING WHEN COMPENSATED BY INSURANCE

1 May 1952

When taxpayer's car was totally destroyed in 1952, the casualty loss minus the estimated collision insurance recovery should be reported for 1952, to be corrected by an amended return if the estimate proves to be erroneous.

INCOME TAXES; ADMINISTRATION; LIABILITY OF GARNISHEE; WHEN FUNDS DESTROYED

4 May 1952

When a garnishee has withheld part of the wages of the taxpayer and has segregated those withheld amounts and the withheld amounts are destroyed without the fault of the garnishee, such destruction does not relieve the garnishee of liability to the State.

SALES TAX AND USE TAX; RADIO TRANSCRIPTIONS;
TELEVISION TRANSCRIPTION SERVICE

6 May 1953

The question is presented as to whether television transcription services, which are necessarily recorded on film, would be exempt from the sales or use tax under the same circumstances and subject to the same conditions as tape and record transcriptions used for ordinary radio broadcasting purposes.

Under the decision in the case of *WATSON INDUSTRIES, INC. v. SHAW*, 225 N. C. 203, television film transcription services should be treated for sales and use tax exemption purposes in the same manner as radio tape and record transcription services.

INCOME TAXES; DEDUCTIONS; CASUALTY LOSS; BASIS

13 May 1953

The amount of casualty loss is the difference between the fair market value before and after the damage, the deduction not to exceed the cost basis of the property.

INHERITANCE TAX; INTESTACY; DETERMINATION OF TAX
WHEN NO HEIRS FOUND

13 May 1953

When a decedent dies intestate and no heirs are found and the property escheats, no inheritance tax is imposed, but an inheritance tax becomes due should an heir later claim and recover the escheated property.

SCHEDULE B, SECTION 122; CONTRACTORS; FEDERAL RESERVATIONS

14 May 1953

The license tax imposed by Section 122 (a) of the Revenue Act upon a person placing a bid upon a construction project within the State of North Carolina does not apply to the placing of a bid for the construction of a building or other project on the Fort Bragg reservation. Neither does Paragraph (b) of this section authorize the collection of a license tax from a contractor who enters into a contract for such construction.

INHERITANCE TAXES; DETERMINATION OF SHARES; EXONERATION OF
MORTGAGE; PRIORITY OF PROPERTY OWNED BY THE ENTIRETIES

18 May 1953

Real property subject to a mortgage is entitled to exoneration from the residuary personalty and from general bequest of personalty. Real property held by the entireties is not entitled to exoneration from solely owned real property.

SALES TAX; SINGLE ARTICLE; TELEVISION ANTENNA

22 May 1953

The antenna of a television broadcasting station is not subject to a maximum sales tax of \$15.00 as a single article. A component part of such an antenna may itself be regarded as a single article.

SALES; EXEMPTIONS; ROUGH OR DRESSED LUMBER;
USED HOGSHEAD STAVES AND HEADS

27 May 1953

Used hogsheads staves and heads do not fall within the sales tax exemption for rough and dressed lumber.

INHERITANCE TAXES; DEBTS; JOINT DEBT OF HUSBAND AND WIFE FOR MONEY
BORROWED TO IMPROVE PROPERTY OWNED BY THE ENTIRETIES

27 May 1953

When husband and wife are joint makers of a note, it is presumed they are equally liable and the estate of the husband is entitled to a deduction for the total amount of the debt. The estate should include an asset equal to the right of contribution, unless evidence shows that the husband was primarily liable.

INHERITANCE TAXES; LIFE ESTATE WITH SPECIAL POWER OF
APPOINTMENT; COMPUTATION OF TAX

27 May 1953

A special power of appointment to designate the shares, but not to exclude, does not fall within Clause Sixth of Section 1 of the Revenue Act, but the remainder interest may be taxed at the highest rate where the interest is contingent on surviving the life tenant, who is the donee of the power.

INHERITANCE TAXES; INCLUSION OF WIDOW'S RIGHT TO WORKMEN'S
COMPENSATION AND TO POLICE PENSION FUND

28 May 1953

Workmen's Compensation claim is exempted from inheritance tax, but the commuted value of payments under the Asheville Policemen's Pension and Relief Fund is includable in the gross estate for inheritance tax purposes.

INCOME TAX; DEDUCTIONS; CHARITABLE CONTRIBUTIONS

29 May 1953

Contributions to a trust are not deductible for income tax purposes as charitable contributions when the sole purpose of the trust is to assist in the support of a single, identified individual.

SALES TAX; SALES THROUGH VENDING MACHINES;
SALES ON MILITARY RESERVATION

2 June 1953

Under the provisions of 4 USCA, Section 105 (The Buck Act), sales taxes may be collected by a state with respect to sales on a Federal reservation when such taxes would be otherwise collectible except for the fact that such sales took place on Federal property.

GASOLINE TAX; WHEN TAX COLLECTED; FIRST SALE

8 June 1953

Under the provisions of G. S. 105-434, the gasoline tax ordinarily accrues on the first sale but this is modified in part by G. S. 105-432, so that, taken together, these sections mean that the first sale in North Carolina is always the taxable sale except in those cases where the first sale is in the form of a tank-car shipment from a port terminal to a licensed distributor within this State, in which case the first sale after such tank-car sale is the taxable sale.

(1) INCOME TAX; EXEMPTIONS; MERCHANTS ASSOCIATION, INC.

(2) FRANCHISE TAX; EXEMPTIONS; MERCHANTS ASSOCIATION, INC.

8 June 1953

An ordinary merchants association, not engaged in activities different from the average association, is exempt from State franchise and income taxes pursuant to Sections 213 and 314 of the Revenue Act, respectively.

SALES TAX; SINGLE ARTICLE; STEEL GIRDER

9 June 1953

The sales tax on the sale of a steel girder is subject to the single article limitation.

LICENSE TAXES; TWO-IN-ONE VENDING MACHINES; HOROSCOPE AND
WEIGHING MACHINES; SECTION 130½

16 June 1953

A two-in-one vending machine operates in the following manner: The insertion of a penny in a penny slot will indicate correct weight; the insertion of a nickel in the nickel slot will indicate correct weight and also vend a "horoscope scroll, eleven inches long, two and one-half inches wide, printed on both sides". Such a combination machine would be subject to both the weighing machine privilege license and also the vending machine license levied with respect to machines vending merchandise for less than 5 cents per unit.

GASOLINE AND MOTOR FUELS TAX; DISTRIBUTOR
SELLER OF COLORED KEROSENE

18 June 1953

One who purchases for resale only colored kerosene or who purchases kerosene and colors same prior to resale is not a distributor within the meaning of subsection (b) of Section 105-430 of the gasoline and motor fuels tax.

INTANGIBLES TAX; FOREIGN TRUST; RIGHT OF RESIDENT TO INVADE CORPUS:
RIGHT TO REVOKE WITH CONSENT OF TRUSTEE

1 July 1953

The right of a resident grantor of a non-resident trust to revoke the trust with the written consent of the trustee is not such an interest as to be subject to the intangible tax.

GASOLINE TAX; REFUNDS; VEHICLES DESIGNED FOR USE ON HIGHWAYS

7 July 1953

If a motor vehicle is licensed for operation on the highways, and is used on the highways some and off the highways some, no tax refund is permissible with respect to motor fuel purchased for and used in such vehicle irrespective of the fact that it is used some or even principally off the highways.

INTANGIBLES TAX; OUT-OF-STATE BANK DEPOSITS;
MONEY IN ESCROW OR HELD IN TRUST

9 July 1953

Bank deposits held in escrow outside this State for a domestic corporation are subject to the State intangibles tax.

INCOME TAX; GROSS INCOME; FLORIDA INCOME EARNED BEFORE AND
RECEIVED AFTER MOVING TO NORTH CAROLINA

10 July 1953

When a salesman earns a bonus in Florida while living in Florida and then becomes a resident of North Carolina prior to receiving such bonus, the bonus is subject to the North Carolina income tax if paid to the salesman after he becomes a resident of North Carolina.

- (1) INCOME TAX; GROSS INCOME; HOUSING AUTHORITIES' BONDS; TAX EXEMPTIONS; TERRITORIES OF ALASKA, HAWAII, PUERTO RICO
AND THE VIRGIN ISLANDS
- (2) INTANGIBLES TAX; HOUSING AUTHORITIES' BONDS; TAX EXEMPTIONS;
TERRITORIES OF ALASKA, HAWAII, PUERTO RICA
AND THE VIRGIN ISLANDS

14 July 1953

Interest on local housing authority bonds of the Territories of Alaska, Hawaii, Puerto Rico and the Virgin Islands is exempt from North Carolina State income tax; local housing authority bonds of the Territories of Puerto Rico and the Virgin Islands are exempt from the North Carolina intangibles property tax; and local housing authority bonds of the Territories of Alaska and Hawaii are subject to the North Carolina intangibles property tax.

SALES TAXES; PHOTOGRAPHIC EQUIPMENT; SALES OF PHOTOGRAPHERS
SUPPLIES BY JOBBER TO PHOTOGRAPHER

14 July 1953

Sales by jobbers to commercial photographers of mounts, frames, sensitized paper and other supplies which enter into and become an ingredient or component part of the finished picture sold by the photographer are taxable at the wholesale rate. Sales of chemicals, films, plates, proof paper, cameras, trays and other materials that are used in the processing or fabrication of such pictures and that do not become ingredient or component parts of such pictures are sales for use and are taxable at the retail rate.

LICENSE TAX; AMUSEMENT PARK; SHUFFLE BOARD COURT;
ARCHERY RANGE; SECTION 131

16 July 1953

Even though more than one shuffle board court is marked off on a particular lot or location, only one license is required under the provisions of

G. S. 105-66. That is, one shuffle board license will cover the entire single lot or location irrespective of the number of shuffle board courts marked off on such lot or location.

INHERITANCE TAX; REAL PROPERTY; LIABILITY OF EXECUTRIX

20 July 1953

Even though real property of a decedent does not pass to the personal representative for purposes of administration, the personal representative is under a duty to remit the full amount of inheritance taxes due the state, including the portion attributable to real property. Therefore, when the personal representative has made such remittance a refund of that portion of the tax attributable to the real property may not be made to the personal representative.

INCOME TAX; DEDUCTIONS; LOSSES FROM SALE OF STOCK OR BONDS OWNED LESS THAN ONE YEAR

22 July 1953

Losses incurred in the income year from the sale of stocks and bonds owned less than one year may be deducted for income tax purposes only from gains from sale of stocks and bonds and not from gains realized from the sale of other kinds of property such as real estate.

INHERITANCE TAX; ESTATE TAX; RECURRING TAX

3 August 1953

When a decedent dies owning property upon which an inheritance tax has been paid within the preceding two years such property is not included in calculating the inheritance tax payable to the State. However, if the inheritance tax so computed is less than the maximum credit allowed by the federal statute against the federal estate tax, then the state should collect an estate tax sufficient to bring the total taxes payable to the State up to the maximum credit allowed under the federal law. This is true even though the federal estate tax, and so the maximum credit allowable thereon, be computed by including in the taxable estate the property upon which an inheritance tax has been paid to North Carolina within the preceding two years.

SALES AND USE TAX; EXEMPTIONS; MILL MACHINERY AND ACCESSORIES; FLUORESCENT LIGHTS

3 August 1953

The question has been raised as to whether certain fluorescent lights used in taxpayer's mill constitute mill machinery within the meaning of

Subsection (m) of Section 406 of the Revenue Act which provides that sales to manufacturing industries and plants of mill machinery or mill machinery parts and accessories may be classified as wholesale sales and, therefore, only subject to the wholesale rate of tax.

It appears that some of the lights in question are built into the machines that are used and that some are not.

All such lamps and lights as are not built into the machines would not be subject to the exemption and would not constitute mill machinery or mill machinery parts or accessories. Insofar as the lamps built into the machines are concerned, if they were, in fact, so built and manufactured as to constitute part of the manufacturing machine, I think that the entire machine would be subject to the exemption and a lamp built into the machine would not be separated from the rest of the machine for sales tax purposes.

INHERITANCE TAX; "LAWFUL HEIRS"; LEGATEES; WIDOW AS "LAWFUL HEIR" WHEN ONLY PERSONAL PROPERTY IS INVOLVED

10 August 1953

By the terms of the will of a certain person the residuary estate, consisting of real and personal property, was to be sold and the proceeds paid to certain named persons (brothers and sisters of the testator) with the further stipulation that: "In the event that any of the above-named legatees shall predecease me, it is my will and desire that the share of such legatee shall be paid to his or her lawful heirs, share and share alike." Two of the named residuary legatees predeceased the testator, in each instance leaving a widow and several children. The widow in each instance is entitled to share along with the children in the property that would have gone to the legatee in question had he been living at the time of the testator's death.

SALES TAX; RESTAURANT OR NIGHT CLUB; "MINIMUM CHARGE";
APPLICABILITY OF SALES TAX

11 August 1953

In a certain tavern food and beverages are served and sold and dancing is permitted. A minimum charge of 50c per person is charged patrons on Sunday through Thursday and a minimum charge of \$1.00 per person is charged on Friday and Saturday. In practice the Club operates in this fashion: If the total menu price of all that is purchased by a patron on a Monday, for example, totals 50c or more, then such patron pays the total menu price. If the total menu price of a customer's purchases is less than 50c, such customer is, nevertheless, charged 50c. Likewise, if the customer purchases nothing, he is, nevertheless, required to pay 50c. In such a situation sales tax liability would attach only with respect to the menu price and not to the service charge which is the difference between the menu price and the total paid.

SALES TAX; EXEMPTION; VETERINARIAN SUPPLIES AND
VETERINARY HOSPITAL

11 August 1953

The sales tax exemption contained in Subsection (k) of G. S. 105-169 with respect to sales of drugs or medical supplies to physicians did not include sales to veterinarians prior to the 1953 legislative amendment because the term "physician" has been held to mean one who diagnosed and treated injuries and diseases of the human system and not of animals. The 1953 amendment has enlarged the exemption so as to place veterinary physicians on the same basis as general physicians.

LICENSE TAXES; CONTRACTORS AND CONSTRUCTION COMPANIES; INSTALLA-
TION OF PREFABRICATED HOMES; SECTION 122 OF THE REVENUE ACT

12 August 1953

The assembling of prefabricated homes, including laying the foundation, building a chimney, installing electric wiring and plumbing, and performance of other services necessary to furnish a completed dwelling house constitutes "construction" within the meaning of subsection (b) of Section 122 of the Revenue Act.

INCOME TAX; DEDUCTIONS; ALIMONY PAYMENTS IN INSTALLMENTS; NO
MAXIMUM DEDUCTION WHEN NO DEPENDENTS INVOLVED

12 August 1953

Under the income tax law, there is no ceiling on the amount of alimony paid to a wife which is deductible for income tax purposes.

LICENSE TAXES; CONTRACTORS; REVENUE ACT, SECTION 122

20 August 1953

The tax imposed by Section 122 of the Revenue Act upon a person who places a bid to construct within the State of North Carolina any building or other structure applies even though the construction is to be done pursuant to a contract with the United States Navy Department upon land owned by the United States, unless the State of North Carolina has ceded to the United States exclusive jurisdiction over such land.

SALES TAX: SINGLE ARTICLE; TRAILER AND EQUIPMENT

25 August 1953

Nothing else appearing, a trailer and the refrigerator, stove, bed, chairs, bed springs, and mattresses with which the trailer comes fully equipped are separate articles for sales tax purposes even though a lump sum is paid for the trailer and equipment.

INCOME TAXES; TRUSTS AND ESTATES; NON-RESIDENT BENEFICIARY OF
RESIDENT TRUST; DEDUCTIBILITY OF PERSONAL EXPENSES

1 September 1953

A California resident receiving her entire income, or her entire income except for a very small sum, from a North Carolina estate is entitled to the deductions permitted by our statute.

INCOME TAXES; DEDUCTIONS; NET ECONOMIC LOSS; NORTH CAROLINA
RESIDENT SUSTAINING LOSS IN VIRGINIA PARTNERSHIP

1 September 1953

A North Carolina resident realizing income from a Virginia partnership having an established place of business in Virginia is entitled to deduct the Virginia income to the extent provided by Subsection (10) of Section 322 of the Revenue Act. If he sustains a net loss on his Virginia operations he is entitled to the benefit of deducting this loss, since Section 310 imposes the tax on net income. He is limited by Subsection (6) of Section 322 in carrying over a net economic loss occasioned by a loss of the Virginia partnership.

SALES TAX; WHOLESALE SALES; SALES IN NORTH CAROLINA BY FOREIGN
CORPORATION; WHAT CONSTITUTES SALE IN THIS STATE

3 September 1953

When a foreign corporation fills orders by making deliveries in North Carolina from stocks of goods located in North Carolina to North Carolina customers or to out-of-State customers accepting delivery in North Carolina of goods held by the corporation in North Carolina, such sales are subject to the State sales tax.

INCOME TAXES; ALLOCATION; FOREIGN CORPORATIONS;
INCLUSION OF DIVIDEND OF SUBSIDIARY

10 September 1953

Under the peculiar facts presented and subject to the limitations expressed, dividends from a wholly-owned subsidiary are not includable in the allocable income of the foreign corporation parent.

FRANCHISE TAX; STATUTE OF LIMITATIONS; G. S. 105-124 AND 105-241.1

10 September 1953

There is no statute of limitations applicable with respect to franchise taxes in a case where a corporation has never filed a franchise tax return.

INCOME TAXES; GROSS INCOME; DIVIDENDS OF REGULATED
INVESTMENT COMPANY

10 September 1953

Distributions by regulated investment companies to shareholders of gains derived from the sale of stock investments must be reported as ordinary income. That some of these distributions consist of stock rather than cash is irrelevant, since the shareholder has the option to receive cash if he wishes.

SALES AND USE TAX; RENTALS OF PERSONAL PROPERTY; APPLICATION OF
"SINGLE ARTICLE" MAXIMUM TAX PROVISION TO A RENTAL

16 September 1953

The \$15.00 "single article" maximum sales tax applies to rentals of personal property. The measure of the "single article" of rent is not the pay periods but the total term provided by the rental contract.

(1) GASOLINE TAX; REFUND; VEHICLES DESIGNED FOR USE ON HIGHWAYS

(2) MOTOR VEHICLES; REGISTRATION PLATES

16 September 1953

The statutes provide for gasoline tax refund in two instances:

(1) When the gasoline is used for a purpose other than the operation of a motor vehicle designed for use upon the highways; and (2) when the gasoline is used in a motor vehicle designed for use but not used in or upon the highways.

INCOME TAXES; GROSS INCOME; DEDUCTIONS; COLLECTION BY CREDITOR
OF PROCEEDS OF INSURANCE ON LIFE OF DEBTOR

23 September 1953

A debt is not worthless to the extent the creditor recovers proceeds of a life insurance policy procured by the creditor on the life of his debtor even though the creditor paid the premiums on the policy. To the extent that the proceeds are insufficient to cover the amount of the debt, and the debt is not otherwise paid, the creditor is entitled to a loss deduction within the limits of deductions for bad debts. Any excess amount by which the proceeds of the policy exceed the debt is exempted from gross income under Section 317 of the Revenue Act.

INHERITANCE TAXES; DEDUCTION OF DEBTS WHERE PROPERTY
SUBJECT TO CLAIMS IS INSUFFICIENT

23 September 1953

Where a decedent's assets subject to the claims of creditors are insufficient to pay his debts, and the gross estate includes trust property and property held by the entireties all of which is exempt from the claims of the decedent's creditors and the recipient of the trust interest and survivor taking the property held by the entireties pays out of her own funds the unsatisfied debts, the entire amount of the debts is deductible from the gross estate of the decedent in determining the North Carolina inheritance tax due on the estate, the deduction not being limited to the amount by which the assets of the estate subject to creditors are sufficient to pay the debts.

INCOME TAX; ASSESSMENTS; APPEALS

25 September 1953

After a hearing before the Commissioner of Revenue to protest an income tax assessment, a taxpayer may file exceptions to the findings of the Commissioner of Revenue. The Commissioner is required to pass upon such exceptions formally. The taxpayer may, within ten days after notification of the Commissioner's ruling on the exceptions, appeal either to the State Board of Assessment or to the Superior Court of Wake County. Upon appeal to the State Board of Assessment, the Commissioner may in his discretion require a surety bond in double the amount of the assessment in question. Before appeal to the Superior Court, the assessed tax must be paid by the taxpayer.

LICENSE TAX; CONTRACTORS; PLACING BIDS OUTSIDE NORTH CAROLINA

5 October 1953

Since a contrary construction would raise serious constitutional questions, Section 122 (a) of the Revenue Act should not be construed as imposing a license tax liability upon a resident of another state who places in another state a bid for the construction of a building to be erected in North Carolina.

INHERITANCE TAXES; STATUTE OF LIMITATIONS; APPLICABILITY OF THREE
YEAR STATUTE ON ASSESSMENTS

5 October 1953

Inheritance taxes due on an estate constitute a lien on the property passing to heirs, legatees, and devisees until such time as the taxes are paid or until the expiration of twenty years from the date of death of the decedent, as provided in Sections 18, 28 and 30 of the Revenue Act.

INCOME TAX; ALLOCATION; DOING BUSINESS

5 October 1953

When the activities of a foreign corporation in this State are limited to soliciting sales which orders are forwarded to an office outside this State where they are filled by direct shipment to the customers within this State, such activities would not constitute doing business in this State and there would be no State income tax liability with respect to such activities.

FRANCHISE TAX; DOING BUSINESS; CORPORATION OWNING
LAND IN NORTH CAROLINA

15 October 1953

A foreign corporation engaged in the securities business but holding a tract of land in North Carolina in the hope of realizing a profit on the future sale of such land and not intending to make any other active use of said land is not doing business within the State such as to require domestication and the payment of franchise tax.

INHERITANCE TAXES; DEDUCTION OF DEBT FOR PURCHASE OF LAND
HELD BY WIFE

21 October 1953

When a husband and wife purchase land in the name of the wife and both sign the notes therefor and there is no agreement between them respecting either the land or the payment of the notes, the husband's estate is entitled to a deduction for the full unpaid amount of the notes but should include as an asset of the estate the right of contribution from the wife to the extent of one-half the unpaid amount of the notes, unless this right of contribution is of less value due to insolvency or other circumstances.

STATE TAXATION OF RETIREMENT PAY OF NORTH CAROLINA
STATE EMPLOYEES AND TEACHERS

21 October 1953

A North Carolina State employee's or teacher's retirement pay is by statute expressly made exempt from State taxes.

INCOME TAXES; GROSS INCOME; NON-RESIDENT STOCKHOLDER;
LIQUIDATION DISTRIBUTION

2 November 1953

A Florida resident, a stockholder in a North Carolina corporation, receiving a final liquidation distribution of the corporate assets in kind is not liable for income taxes on the amount by which the market value of the distribution exceeds the cost basis of the stock.

INCOME TAXES; ALLOCATION; DOING BUSINESS; OWNERSHIP OF
RENTAL PROPERTY IN NORTH CAROLINA

3 November 1953

Under the particular facts presented, a foreign corporation whose activity in North Carolina consists solely of owning a piece of property leased for a long term to a net lessee is doing business in this State and must pay income taxes.

SALES AND USE TAX; SALES BY MANUFACTURER; SALES TO MANUFACTURER;
INGREDIENTS OF MANUFACTURED PRODUCT; SALES BY
MANUFACTURER TO MANUFACTURER

9 November 1953

Under the special circumstances of this case, sales by a lumber manufacturer of lumber to a furniture manufacturer to be used in manufacturing furniture would not be subject to any sales tax.

CLERKS OF SUPERIOR COURT; CERTIFICATES OF TAX LIABILITY; CLERKS' FEES

17 November 1953

Subsection 8 of G. S. 1-52 provides a three-year statute of limitations with respect to fees due to a clerk of court by the judgment of the court. The statute begins running upon the rendition of the judgment or the issuing of the last execution thereon.

INCOME TAXES; DEDUCTIONS; COMMODITY FUTURES LOSSES;
DEDUCTIBILITY WHEN EXCEED GAINS

17 November 1953

Losses from transactions in commodity futures are deductible only to the extent of the gains from the same type of activity, even though the taxpayer is engaged in that business. General expenses, such as telephone calls, stationery, and post office box rental, are deductible as ordinary and necessary business expenses.

INCOME TAXES; GROSS INCOME; ASHEVILLE POLICEMENS'
PENSION AND RELIEF FUND

19 November 1953

Payments received by a widow from the Asheville Policemens' Pension and Relief Fund on account of the death of her husband in the line of duty are subject to North Carolina income tax under the annuity rule of Section 317 of the Revenue Act.

INCOME TAXES; EXEMPTIONS; HEAD OF HOUSEHOLD;
WIFE WITH HUSBAND LIVING

19 November 1953

A wife living with husband whose gross income exceeds \$500.00 is not entitled to claim a head of the household exemption because she supports therein her mother and mother-in-law, absent facts to show that the wife rather than the husband is entitled to and does control the household.

SALES AND USE TAX; EXEMPTIONS; ROUGH LUMBER; PRODUCTS OF FARMS
AND FORESTS WHEN SALES MADE BY PRODUCERS IN
ORIGINAL OR UNMANUFACTURED STATE

19 November 1953

Sales of pine slabs, when cut by the person owning the property upon which the trees are grown, and sold to be used as fuel for heating purposes, have uniformly been held to be exempt from the sales tax under the provisions of Section 406 (1). This is regarded as falling within the exemption of sales by a producer of products of the forest in their original or unmanufactured state. Sales of posts and pilings are exempt from the sales tax in the special case where they are merely tree trunks or limbs with the branches cut off and the bark left on provided such sales are made by the original producer pursuant to Section 406 (1) of the Revenue Act, relating to sale, by a producer, of products of the forest in the original or unmanufactured state.

Sales of shingles are not exempt from the State sales tax.

FRANCHISE TAXES; DUTY OF COMMON MOTOR CARRIERS TO PAY

19 November 1953

A common carrier of property by motor vehicle paying the license tax exacted under either alternative of G. S. 20-88 (e) is not required to pay the franchise tax exacted by Article III of the Revenue Act.

INCOME TAXES; ALLOCATION; UNINCORPORATED
BUSINESS INCOME; DEFINITION

20 November 1953

For purposes of exclusion from the reciprocity credit of Section 325 (2) of the Revenue Act, an unincorporated business means not only partnerships but also joint associations and sole enterprise business firms.

LICENSE TAX; BEER WHOLESALER; CHAIN STORE; STORAGE WAREHOUSE

1 December 1953

The Chain Store Tax levied by Section 162 of the Revenue Act applies only if the establishment in question is a store or mercantile establishment. In order to be a "mercantile establishment", it is not necessary that the actual sale take place at the establishment, but it is necessary that there be at that place customarily some contact between the proprietor and his customers. A place where the proprietor stores his own merchandise and to which no one goes other than his truck driver who there loads his truck with merchandise which he carries to actual or prospective customers is not a "mercantile establishment".

FRANCHISE TAX; EXEMPTIONS; CLUBS

1 December 1953

A club which is incorporated and which is empowered by its Certificate of Incorporation to issue common stock, to promote athletic contests for profit, to serve meals to members and others, and to operate stores in which all kinds of merchandise may be sold, is not exempt from the franchise tax, there being nothing in its Certificate of Incorporation which provides that the profits are to be distributed among its stockholders.

INCOME TAXES; DEDUCTIONS; COMMODITY FUTURES LOSSES;
DEDUCTIBILITY WHEN EXCEED GAINS

4 December 1953

For purposes of income tax computation, a taxpayer is entitled to deduct all losses from transactions in commodity futures contracts or from the sale of corporate shares or bonds of corporations or governments owned less than one year to the extent of his gains from transactions in commodity futures contracts or from the sale of corporate shares or bonds of corporations owned less than one year. To the extent that his losses from any of these transactions exceed his gains from these transactions he would not be entitled to a deduction.

SALES AND USE TAX; SALES BY MANUFACTURER; WHOLESALE SALES

4 December 1953

Under the particular facts of this case, no wholesale sales tax would apply to wholesale sales made by this quarrying corporation.

ADMINISTRATION OF ESTATES; ANCILLARY ADMINISTRATION; REQUIREMENTS
FOR APPOINTMENT; JURISDICTION OVER PROPERTY;
AUTHORITY TO DISTRIBUTE

7 December 1953

Generally speaking, a Clerk of Court may issue letters testamentary in the case of a nonresident dying in his county and leaving assets in his county. The Clerk may permit final distribution either to the general administrator in the state of domicile or directly to the beneficiaries, in his discretion.

LICENSE TAXES; CHAIN STORE TAX; USE OF TELEGRAPH OFFICES;
APPLICABILITY OF TAX; SECTION 162

8 December 1953

Under the various fact situations set forth, it would appear that companies distributing goods through the medium of Telegraph offices might well be subject to the chain store tax with respect to each Telegraph office which was used as a mercantile establishment on the part of the vendor of goods.

MOTOR VEHICLES; OVERLOADING; PENALTIES; COLLECTION PROCEDURE

9 December 1953

Motor vehicle overloading penalties are collectible by suit but are not collectible by the summary procedure set forth in G. S. 20-99 for the collection of taxes.

SALES TAX; SECOND-HAND ARTICLES; SALE BY CHARITABLE
ORGANIZATIONS; EXEMPTIONS

9 December 1953

(1) A sale of a second-hand article is subject to the sales tax unless such article has been repossessed by the seller or was taken in trade as part payment of the purchase price of a new article upon which the full sales tax was paid.

(2) A charitable organization, such as the Women's Auxiliary of a hospital, which acquires property for resale, resells the same, and turns over the proceeds to the hospital, is a retail merchant within the meaning of the Sales Tax Act and is liable for the sales tax on all such sales.

(3) A person or organization employed by another to sell property of such other person on a commission is not liable for the sales tax on such sales.

(4) The owner of such property, so employing such person or organization, is liable for the sales tax upon such sale if the owner is a merchant,

otherwise not, it being immaterial in either case that the owner thereafter donates the proceeds, over and above the commission, to such organization selling for him.

INHERITANCE TAXES; GROSS ESTATE; RAILROAD RETIREMENT BENEFITS;
WIDOW'S CURRENT INSURANCE ANNUITY

9 December 1953

The commuted value of a widow's current insurance annuity payments made pursuant to the provisions of the Railroad Retirement Act is not subject to North Carolina inheritance taxes.

FRANCHISE TAX; INCOME TAX; CONTRIBUTIONS; EXEMPTIONS

9 December 1953

A non-profit corporation created to build and maintain a building for the purpose of providing a meeting place for masonic lodges is a fraternal corporation within the meaning of franchise tax act and is, therefore, exempt from franchise tax liability. Such corporation is not exempt from liability for income tax upon its own corporate income, since it does not provide for the payment of life, sick, accident or other benefits to members of the organization or their dependents. Contributions to such corporation are not deductible by the donor in determining the donor's income tax liability, since the deduction portion of the income tax statute does not apply to contributions to fraternal organizations.

INCOME TAXES; GROSS INCOME; PENSION OF WIDOW OF BRITISH SOLDIER

9 December 1953

Pension payments received from the British Government by the widow of a British soldier constitute gross income and are taxable by North Carolina when the widow is a resident of this State.

INCOME TAX; GROSS INCOME; RECOGNITION OF LOSS OR GAIN;
EXCHANGE OF DEBENTURES FOR STOCK

14 December 1953

When a corporation which has issued debentures and the person holding the debentures later exchanges them for common stock of the same corporation, no loss or gain on the part of such person is recognized at the time of the exchange. Any loss or gain would be ultimately recognized if and when such stock is sold.

LICENSE TAXES; CHAIN STORE TAX; OWNERSHIP OF TWO OR MORE STORES

14 December 1953

When a corporation operates a department store including a shoe department and the corporation owns 85% of the stock of another corporation which operates a shoe store, the State chain store tax is applicable.

INCOME TAXES; GROSS INCOME; RECOGNITION OF GAIN OR LOSS; CORPORATE
LIQUIDATION; NO ASSETS; LIQUIDATION OF SUBSIDIARY

15 December 1953

When a subsidiary, within the meaning of Section 319 of the Revenue Act, liquidates and has no assets, either property or money, to distribute to the parent in exchange for cancellation of the stock held by the parent, the provisions of Section 319 do not apply and the parent would be entitled to deduct the amount of the loss sustained by virtue of the worthlessness of the stock of the subsidiary.

SALES AND USE TAX; EXEMPTIONS; OPHTHALMIC EQUIPMENT

15 December 1953

The sales tax exemption provided with respect to "sales to optometrists and physicians of ophthalmic equipment" does not include eyeglass frames, cases and lenses. The use of the phrase "ophthalmic equipment" in the profession by ophthalmic practitioners, whether optometrists or physicians, indicates a restricted use limited to instruments of the type ordinarily found and used in the office of ophthalmic practitioners, including refracting instruments, ophthalmoscopes, retinoscopes, keratometers, vertometers, acuity projectors, visual acuity meters and various other instruments for diagnosis and treatment.

INCOME TAXES; ALLOCATION; DOING BUSINESS; CONSIGNMENT SHIPMENTS

29 December 1953

Shipping goods into the State on consignment does not constitute doing business, absent other factors such as agency.

SALES TAX; WHOLESALE SALES; SALES IN NORTH CAROLINA BY FOREIGN
CORPORATION; WHAT CONSTITUTES SALE IN THIS STATE

4 January 1954

When a foreign corporation fills orders by making deliveries in North Carolina from stocks of goods located in North Carolina to North Carolina customers or to out-of-State customers accepting delivery in North Carolina of goods held by the corporation in North Carolina, such sales are subject to the State sales tax.

INCOME TAX; DEDUCTIONS; ALIMONY PAYMENTS; NO MAXIMUM DEDUCTION

21 January 1954

There is no maximum limitation on the amount of alimony payments which may be deducted for income tax purposes.

INCOME TAXES; GROSS INCOME; FARMERS; CROP BASIS OF REPORTING

26 January 1954

A nurseryman selling plants which require more than one year from the time of planting to the time of gathering and disposing may report on the crop basis set forth in Section 39.22 (a)-7 (c) of Federal Regulations 118. Thus he may report his income from the crop in the year in which the crop is sold. If he does so, he must take his entire cost of producing the crop as a deduction in the same year. North Carolina follows the Federal practice on this point in accordance with Section 318 of the Revenue Act.

SALES AND USE TAX; EXEMPTIONS; CONTRACTORS NOT EXEMPT ALTHOUGH PERFORMING FEDERAL CONTRACTS

4 February 1954

Purchases by a contractor of materials to be used in fulfilling a contract with the Federal government are subject to the sales and/or use tax.

LICENSE TAXES; CONTRACTORS LICENSES; PROJECT LICENSES; BIDDING LICENSES; SECTION 122; TRANSFERABILITY; SECTION 100 (c); SECTION 184

16 February 1954

A stockholder who owns controlling interest in a corporation on the one hand, and the corporation itself on the other hand, are not the same person for license tax purposes.

INCOME TAX; DEDUCTIONS; BUSINESS EXPENSES; ORDINARY AND NECESSARY EXPENSES

16 February 1954

A donation to a Chamber of Commerce to be used in purchasing a site on which a privately-owned manufacturing plant is to be located does not constitute an ordinary business expense which would be deductible for income tax purposes when such donation is made by a dry goods merchant.

INCOME TAX; GROSS INCOME; ANNUITIES; TAXATION AFTER COST RECOVERED

18 February 1954

In general, annuities are taxable under the North Carolina law on the basis of 3% of the cost of the annuity being treated as taxable income annually. The basis for taxation does not change even when the annuitant

has recovered, tax exempt, his entire cost or consideration. This applies, for example, to an annuity purchased by a private individual from an insurance company.

However, an exception to this general rule is provided for pension, profit-sharing, stock bonus and annuity trusts created by employers for distribution to eligible employees. These annuities or pensions are taxable annually on the basis of 3% of the cost only until the taxpayer has recovered his cost. Thereafter the annuity or pension is 100% subject to tax.

Retirement benefits of the North Carolina Teachers and State Employees Retirement System are completely exempt from tax by specific statute. Retirement benefits received by employees of other states must be examined carefully to determine if they fall within the general rule or the exception.

INCOME TAX; PARENT AND SUBSIDIARY CORPORATIONS

9 March 1954

When Corporation A owns all the stock of Corporation B, receives no dividends but does receive rent from Corporation B on account of property in North Carolina which it leases to Corporation B, both being incorporated in another State, Corporation A may not deduct from its own income anything on account of income on which Corporation B has paid a tax to North Carolina. Resident Stockholders in Corporation A must report their dividends for taxation without any deduction on account of income on which Corporation B had paid a tax to North Carolina.

INTANGIBLE TAX; MONEY ON DEPOSIT; MULTIPLE TRUST ACCOUNT

9 March 1954

When funds held pursuant to several separate trusts are deposited by the trustee in a single bank account, the intangibles tax is computed on the account as a whole just as if it were held for a single beneficiary.

INCOME TAXES; REGULATED INVESTMENT COMPANY; DIVIDENDS AND CAPITAL GAINS DISTRIBUTION; TAXABILITY TO RECIPIENTS

11 March 1954

Dividends from net investment income of a regulated investment company must be reported by North Carolina shareholders as ordinary income. Likewise distributions of net long-term capital gains when the shareholder has the option of taking the distribution in either shares or cash must be reported as income to North Carolina and for practical purposes are taxable as ordinary income.

INCOME TAXES; BASIS; ESTATES BY ENTIRETY; PARTITION FOLLOWING DIVORCE

12 March 1954

A husband and wife purchase property as tenants by the entireties. Subsequently they become divorced and the wife sells her portion of the

property allotted under a partition proceeding. Her basis for her interest in the property is the fair market value of her portion at the time of the divorce.

GASOLINE INSPECTION FEE; GASOLINE BROUGHT INTO NORTH CAROLINA IN
FUEL TANKS OF NEW CARS

16 March 1954

When a manufacturer of automobiles transports into North Carolina to dealers in North Carolina new automobiles in the tanks of which there is gasoline, the manufacturer is liable for the North Carolina inspection fee if title to the car did not pass until it arrived in North Carolina. If title passed before the car arrived in North Carolina the manufacturer is not liable for the inspection fee but the dealer in North Carolina is liable for it.

SALES AND USE TAX; SHIPPING CHARGES; SALES PRICE AS
INCLUDING TRANSPORTATION CHARGES

24 March 1954

A merchant should charge sales tax on the total price of merchandise sold, including cost of transportation to his customer, even though such merchant shows the transportation charge separately on the bill.

INHERITANCE TAX; BANK ACCOUNT; JOINT BANK ACCOUNT

25 March 1954

Money placed in a California joint bank account by a North Carolina decedent shortly before her death should, to the extent that such money remains in the account on the date of her death, be included in her gross estate for North Carolina inheritance tax purposes.

INCOME TAX; ALLOCATION; DOING BUSINESS IN NORTH CAROLINA;
INSTALLATION WORK IN NORTH CAROLINA

29 March 1954

When the activities of a foreign corporation in North Carolina is limited to filling orders in this State by shipment from an out-of-State factory with occasional installation work performed in this State in connection with such sales contracts, such incidental and occasional installation activities are not sufficient to constitute doing business in this State on the part of such foreign corporation.

INCOME TAX; GROSS INCOME; RETIREMENT PAY OF
RETIRED REGULAR ARMY OFFICER

29 March 1954

Retirement pay received by a regular army officer is not exempt from the North Carolina income tax law.

LICENSE TAXES; TRADING STAMPS; LICENSE FOR EACH SEPARATE
PLACE OF BUSINESS; SECTION 156

29 March 1954

When a trading stamp company issues and distributes trading stamps from more than one location, a license must be obtained under Section 156 of the Revenue Act with respect to each location.

SALES AND USE TAX; EXEMPTIONS; MILL MACHINERY; CORK AND INSULA-
TION MATERIALS IN ICE AND ICE CREAM MANUFACTURING PLANTS

30 March 1954

Sales of mill machinery to a manufacturing plant are subject to sales tax only at the wholesale rate under the provisions of Section 406 (m) of the Revenue Act. However, materials consumed by a contractor in the course of performing a contract for a manufacturing plant are subject to tax at the 3% rate when so used by the contractor even though such materials when installed would constitute mill machinery.

INCOME TAX; GROSS INCOME; ANNUITIES; TEACHERS RETIREMENT
SYSTEMS OF OTHER STATES

2 April 1954

Income received by reason of participation in an out-of-State governmental retirement system is ordinarily subject to the North Carolina income tax after recovery of the cost to the taxpayer, that is, after recovery of contributions made to the system.

LICENSE TAXES; TRADING STAMP COMPANIES; PREMIUM STORES;
CHAIN STORES; SECTION 162

5 April 1954

When a trading stamp company operates more than one store in this State for the redemption of trading stamps by means of distribution of premiums, the trading stamp company is subject to the North Carolina chain store tax.

SALES TAX; SINGLE ARTICLE; TENTS

6 April 1954

The canvas covering of a large tent is a single article within the meaning of the sales tax law even though it is made in sections which are laced together when the tent is erected and unlaced when it is taken down.

INHERITANCE TAXES; POWER OF APPOINTMENT; RENUNCIATION BY
APPOINTEE WHO TAKES ON GIFT OVER

7 April 1954

Under the particular facts of this case, an appointee under a power of appointment renouncing the appointment takes under the gift over provisions of the donor's will and the inheritance taxes are computed on the basis of the relationship between the renouncing appointee and the donee under the power.

INHERITANCE TAXES; ABSOLUTE BEQUEST; ORAL DECLARATION OF
TRUSTS AT TIME OF EXECUTION OF WILL

13 April 1954

When a testator wills property absolutely to a person and prior to or contemporaneously with the execution of the will orally declares that the beneficiary is to hold the property in trust for proper and legal purposes, the trust is legally enforceable and the inheritance taxes should be computed on the basis of the distribution set forth in the trust declaration.

BEER AND WINE LICENSES; PARTNERSHIP; DEATH OF PARTNER

26 April 1954

When a wholesale beer license has been issued to a partnership, and one partner buys out the other partner and continues to engage in the whole-sale beer business, the surviving partner may not continue to carry on the business under the partnership beer license, but must secure a new, individual license.

GIFT TAXES; GIFT OF REAL PROPERTY TO SON;
DEED BY THE ENTIRETIES

29 April 1954

A mother purchases real property for the purpose of giving it to her son. The son asks that the deed be made to himself and his wife as tenants by the entireties. For gift tax purposes, the evidence is sufficient to show a gift of the entire property to the son.

INCOME TAXES; ALLOCATION; DOING BUSINESS; SALES IN NORTH CAROLINA;
PURCHASE OF GOODS IN NORTH CAROLINA

29 April 1954

Under the particular facts presented a foreign manufacturer maintaining a sales office in North Carolina, acceptance of orders occurring outside North Carolina, the orders being filled by shipment from outside the state, the manufacturer owning no property in the state except the sales

office furniture and keeping no stock of finished goods in the state, the manufacturer purchasing cotton in a bonded warehouse in North Carolina and leaving it in storage until it is shipped to a plant outside the state, is doing business within the state for income and franchise tax purposes.

(1) FRANCHISE TAX; EXEMPTIONS; CHARITABLE CORPORATIONS

(2) INCOME TAX; EXEMPTIONS; CHARITABLE CORPORATIONS

29 April 1954

A charitable corporation is exempt from the State income and franchise taxes when it operates a medical clinic building, and such building is not operated for profit and no profits inure to any stockholder or member of the corporation.

INCOME TAX; TRUSTS, ESTATES AND GUARDIANS; N. C. RENTALS; NON-
RESIDENT FIDUCIARY AND NONRESIDENT BENEFICIARY;
LIABILITY OF BENEFICIARY FOR TAX

29 April 1954

A nonresident beneficiary receiving income from a nonresident trustee, the source of which income is the rental of real property in North Carolina, should report to this State for income taxation on such income distributed or distributable each year to such nonresident beneficiary.

SALES AND USE TAX; INGREDIENT OF MANUFACTURING PRODUCTS; DENTURES
AND ARTIFICIAL RESTORATION OF TEETH; WHOLESALE RATE

30 April 1954

Sales of materials which become ingredients or component parts of dentures or restorations of teeth fashioned by a dental laboratory are subject to the sales tax only at the wholesale rate by reason of the provisions of Subsection 5 of Section 404 of the Revenue Act.

(1) SALES TAX; HOSPITAL CAFETERIA; SALES TAX ON MEALS

(2) LICENSE TAX; HOSPITAL CAFETERIA; RESTAURANT LICENSE TAX;
SECTION 127

30 April 1954

Meals served and paid for in a cafeteria open to the public are subject to the retail sales tax even though the hospital is operated by a charitable, educational, and non-profit corporation. However, free meals furnished student nurses in connection with the operation of a School of Nursing at said hospital would not be subject to the sales tax. The per-chair restau-

rant license tax need not be assessed with respect to every chair in the cafeteria, but it would be proper to make an allocation as between public users and student nurse users of the cafeteria arriving at the number of chairs to be assessed for restaurant license tax purposes.

SALES AND USE TAX; RENTALS; APPLICABILITY OF SINGLE ARTICLE
\$15.00 MAXIMUM TAX TO RENTAL PERIOD

30 April 1954

When an item of personal property is rented for a contract period of twelve months, the twelve month contract rental period is regarded as a single rental and sales tax thereon is subject to a maximum limitation of \$15.00 with respect to the entire contract period of rental of the article in question.

SALES AND USE TAX; EXEMPTIONS; MOTOR VEHICLE REPAIR PARTS; FLEET
OF MOTOR VEHICLES; WHAT CONSTITUTES MOTOR VEHICLE; FORKLIFT
AND PAYLOADER NOT WITHIN EXEMPTION

5 May 1954

A forklift and a payloader do not constitute motor vehicles within the meaning of Section 406 (t) of the Revenue Act which provides for sales tax only at the wholesale rate in the case of sales of lubricants, repair parts and accessories for motor vehicles when made to the owner and operator of fleets of five or more motor vehicles.

INCOME TAXES; DEDUCTIONS; INCOME FROM INVESTMENT IN FOREIGN STATE;
INCOME NOT TAXED BY FOREIGN STATE

14 May 1954

When a resident has income from a business or investment in real or tangible property in another state, and such other state does not tax said income, the income must be reported to North Carolina and tax paid thereon.

LICENSE TAX; OPTICIANS; PERSONS WHO FIT GLASS
FRAMES TO THE FACE; SECTION 109

14 May 1954

A person whose occupation consists of "fitting glasses on the face" is liable for the license tax imposed on opticians by Section 109 of the Revenue Act.

INHERITANCE TAXES; LIENS; PROPERTY SOLD TO BONA FIDE PURCHASER

18 May 1954

When a grantor deeds real estate, reserving a life estate in the property, and subsequent to the grantor's death the grantee conveys the property to

a third party who is a bona fide purchaser without notice, the value of the property is included in the gross estate of the decedent for inheritance tax purposes and the lien of Section 18 of the Revenue Act does not attach to the land.

INHERITANCE TAXES; GROSS ESTATE; TENANCY BY THE ENTIRETIES;
PURCHASE PRICE PAID BY WIFE

21 May 1954

Under the circumstances presented, when a wife purchases real property and pays the purchase price out of her separate estate and directs that the deed be made to herself and her husband, the husband does not hold as a tenant by the entireties and no portion of the property should be included in the husband's gross estate for inheritance tax purposes.

SALES AND USE TAX; MADE-TO-ORDER ALUMINUM AWNINGS; SALE OR
CONSUMPTION IN FULFILLING CONTRACT; COMPUTATION OF TAX

24 May 1954

When aluminum awnings are made to order and are brought to the place of installation unassembled, the transaction constitutes a sale and sales tax at the rate of 3% of the purchase price applies.

INCOME TAXES; ALLOCATION; DOING BUSINESS; MAINTENANCE
OF OFFICE FOR SALESMAN

25 May 1954

Under the particular circumstances stated, the corporations are not doing business by maintaining a sales office in this state.

INCOME TAXES; GROSS INCOME; RECOGNITION OF GAIN OR LOSS;
EXCHANGE OF LIKE KIND WITH BOOT

26 May 1954

X exchanges a house with a basis to him of \$28,500 for \$7,000 cash plus a house having a fair market value at the time of the exchange of \$21,500. X has realized no taxable gain.

SALES AND USE TAX; SALES TO NONRESIDENTS; SHIPMENTS TO NON-
RESIDENTS; PURCHASE BY RESIDENT WITH DIRECT
SHIPMENT TO NONRESIDENT

31 May 1954

The sales tax is applicable to a sale by a North Carolina merchant to a North Carolina resident who is making a gift of goods purchased to an out-of-State donee and who arranges for the merchant to use his wrapping and shipping facilities.

LICENSE TAXES; MERCANTILE AGENCY; WHAT CONSTITUTES MERCANTILE
AGENCY; SECTION 123

3 June 1954

G. S. 105-57 levies a license tax on persons engaged in the business of reporting "the financial standing of persons, firms, or corporations for compensation". For the purposes of this section, a report does not constitute a report as to financial standing if it does not include the essential elements of net worth, or a statement of liabilities and assets which would disclose net worth, or other pertinent information disclosing "financial standing".

INHERITANCE TAXES; DEVISE OF LIFE ESTATE; COMPUTATION OF TAX

14 June 1954

Under the facts stated, there was no power of appointment nor a reserved power of revocation created by the deviser and the provisions of the sixth paragraph of Section 1 of the Revenue Act are not applicable in determining the inheritance taxes.

INCOME TAXES; DEDUCTIONS; INCOME FROM PROPERTY IN
FOREIGN COUNTRY; NATURE OF OIL ROYALTIES

15 June 1954

Overriding royalties from Venezuelan oil concessions constitute an interest in real property. When a North Carolina resident is required to pay income tax on such royalties to Venezuela, he is entitled to the deduction contained in Section 322 (10) (b).

GENERAL ADMINISTRATION; CERTIFICATE OF TAX LIABILITY; WHEN
INCOME TAX LIEN ATTACHES TO PERSONALTY

15 June 1954

Under the provisions of Section 912 and Section 913 (3) of the Revenue Act, it would appear that the State's lien for taxes would not attach to a taxpayer's personal property prior to levy.

INCOME TAX; FOREIGN CORPORATIONS; NET ECONOMIC LOSS;
NON-TAXABLE INCOME

15 June 1954

When a foreign corporation doing business in this and other states has a net economic loss, such loss should be apportioned to North Caro-

lina by the use of the same allocation fraction which would be used to apportion net income. Non-taxable income must be taken into consideration in determining whether there is a net economic loss. If in the following year the corporation has net taxable income and also has non-taxable income these should be allocated to North Carolina by using the allocation fraction for that year. The portion of non-taxable income for that year allocated to North Carolina should be subtracted from North Carolina's portion of the net economic loss from the prior year. The remainder is the deduction allowable in the second year on account of the loss in the first year.

FRANCHISE TAX; EXEMPTIONS; NORTH CAROLINA

15 June 1954

An amendment to a corporation's charter which authorizes the directors in their discretion upon dissolution of the corporation to give all its assets to another corporation organized for similar purposes does not transform the corporation into a nonprofit corporation. Even though a corporation is a nonprofit one it is not exempt from franchise tax unless it is one of the type of organizations enumerated in Section 213 of the Revenue Act.

INHERITANCE TAX

16 June 1954

When a resident of North Carolina eighteen years before her death conveys property to trustees, retaining no right to amend or revoke the trust and no right to the income, giving the trustees complete power to dispose of the income during the settlor's life as the trustees see fit and providing for distribution of the principal upon the death or marriage of the trustee following the death of the settlor, such distribution being to the person who would have taken as next of kin to the settlor had the settlor died intestate at the time of the distribution, no inheritance tax is due the State on account of this transfer.

INCOME TAX; GROSS INCOME; JURISDICTION TO TAX; INCOME OF NONRESIDENT FROM PERSONAL SERVICES IN STATE

24 June 1954

Inasmuch as Iowa has no reciprocity statutes affording relief from Iowa income tax to North Carolina residents earning compensation in Iowa, a resident of Iowa is liable for North Carolina income tax with respect to compensation earned in this State.

DIGEST OF MISCELLANEOUS OPINIONS

LICENSE TAXES; PLUMBING LICENSES; CARRYING ON BUSINESS IN SEVERAL PLACES; SECTIONS 100 (A) AND 155 OF THE REVENUE ACT

1 July 1952

A plumbing contractor who maintains his principal office in one place and carries on plumbing activities in municipalities in other counties is required under Section 155 to procure an additional State license for each place where he carries on said business.

DRIVERS' LICENSES; REVOKING DRIVER'S LICENSE NEVER ISSUED

1 July 1952

One to whom an operator's license has never been issued cannot be guilty of operating a motor vehicle after revocation of his license.

HAVELOCK ZONING COMMISSION; QUALIFICATIONS OF MEMBERS

1 July 1952

Members of the Havelock Zoning Commission created by Chapter 757 of the Session Laws of 1951 are exempt from the provisions of Article XIV, Section 7, of the Constitution, which prohibits double office holding. In order for a person to qualify as a member of the Commission, he must be a legal resident and voter in the area over which the Zoning Commission has jurisdiction.

GAMBLING; JUSTICE OF THE PEACE; JURISDICTION

2 July 1952

A justice of the peace does not have final jurisdiction in cases in which persons are charged with gambling since the punishment for this offense is a misdemeanor and is greater than that which may be administered by a justice of the peace.

MOTOR VEHICLES; FOR HIRE; RIDE-SHARING ARRANGEMENT

2 July 1952

A "For Hire" license plate is not required, regardless of the capacity of the vehicle, if all of the following facts are present:

(a) The vehicle is an automobile as distinguished from a bus, truck, or other motor vehicle; (b) it is operated by the owner; (c) the cost of

operation is shared by the passengers on a "share the expense" plan. Otherwise, a "For Hire" license is required for a passenger motor vehicle operated in transporting passengers for compensation if the vehicle is designed to carry more than 7 passengers, including the driver.

SCHOOLS; CURRENT EXPENSE BUDGET; PAYMENT TO ADMINISTRATIVE
UNITS MONTHLY

2 July 1952

G. S. 115-363 requires the county treasurer to pay to each of the school administrative units in the county monthly and on a per capita enrollment basis its share of all funds collected for the current expense budget until the full amount of each budget, together with any supplementary budget that may have been adopted and approved, has been paid. If there are additional collections after that, these additional funds will remain with the county treasurer to the credit of the various administrative units on a per capita enrollment basis and this surplus can be taken into consideration in making the budget for the next fiscal year. G. S. 115-368, G. S. 153-124 and SCHOOL TRUSTEES v. BENNER, 222 N. C. 566.

MOTOR VEHICLES; RULES OF THE ROAD; HAND SIGNALS

3 July 1952

G. S. 20-154 requires the driver of any vehicle upon a highway, before turning from a direct line, to give the customary signal of his intention to make such movement, the signal being given by hand or by mechanical device. This section is not limited to turning at an intersection, but applies also to one who turns into another lane of traffic so as to pass a vehicle which he is overtaking.

(1) MUNICIPAL CORPORATIONS; AUTHORITY TO FURNISH WATER AND SEWER
FACILITIES FOR COUNTY SCHOOLS

(2) SCHOOLS; AUTHORITY OF COUNTY BOARD OF EDUCATION TO CONTRACT
WITH CITY FOR WATER AND SEWERAGE FACILITIES

7 July 1952

G. S. 160-255 authorizes municipalities to furnish water to persons desiring the same outside the corporate limits where the service is available. In the case of CONSTRUCTION COMPANY v. RALEIGH, 230 N. C. 365, the Supreme Court held that the matter of furnishing water and sewer facilities by a city to persons living outside its limits is entirely contractual. Under G. S. 115-84-91-92 and 96, it is the duty of county boards of education to provide equipment, water and sanitary facilities for school buildings. Under these sections it is thought that a county board of education may contract with a municipality to furnish water and sewer facilities to a school building located outside the corporate limits. It would

also seem that the provisions of Article 8, Chapter 143, of the General Statutes, relative to advertisement for competitive bids, are not applicable to such contract. *MULLEN v. LOUISBURG*, 225 N. C. 53.

MUNICIPALITIES; WATER AND SEWAGE FACILITIES; INSTALLATION BY PRIVATE
INDIVIDUALS; PAYMENT BY WATER AND LIGHT REVENUES;
ANNEXATION OF CONTIGUOUS AREA

3 July 1952

A municipality does not have the authority to enter into an agreement with the builders of a subdivision which is located outside of the municipality and agree to pay or refund to them the cost of installing water and sewer mains from the gross water and electric light revenues collected by the city from tenants who shall occupy the dwellings in the subdivision.

INTOXICATING LIQUORS; BEER AND WINE;
TRANSPORTATION INTO DRY COUNTIES

7 July 1952

Construing together G. S. 18-49 and 18-32 it is doubtful that it is a violation of law for a person to bring into a dry county one gallon of whiskey legally purchased from an ABC store and at the same time bring in one case of beer, provided the seals on the bottles have not been broken.

It is doubtful that G. S. 18-6 and 18-13 require the confiscation of whiskey when a person is arrested in a dry county charged with public drunkenness and has on his person two or three pints of tax-paid whiskey with the seals on the bottles unbroken.

LICENSE TAXES; LAUNDRIES; WORK PERFORMED
OUTSIDE COUNTY; SECTION 150

7 July 1952

Under Section 105-85 a county may levy a license tax on a person engaged in the business of laundry work when the work is performed outside the county. This is true even in the case where the work is performed in the same city if the work is actually performed in that part of the city lying in another county.

GASOLINE TAX; NON-HIGHWAY USE; REFUNDS

7 July 1952

The Commissioner of Revenue may not refund taxes paid on gasoline used for non-highway purposes unless the request for refund is filed as required by the statute. No request may include gasoline purchased prior to the quarter preceding the making of a refund.

SCHOOLS; USE OF SCHOOL BUILDINGS FOR COMMUNITY PURPOSES

7 July 1952

G. S. 115-95 makes it the duty of county and city boards of education to encourage the use of a school building for civic or community meetings of all kinds that may be beneficial to the members of the community. This section also provides that the State and local boards of education shall have power and authority to promulgate rules by which school buildings may be used for other than school purposes. G. S. 115-136 provides that local school committees shall be entrusted with the care and custody of school property, subject to the rules and regulations governing school property adopted by the county boards of education.

SCHOOLS; AUDIT OF SCHOOL FUNDS

7 July 1952

G. S. 115-168 and G. S. 115-369 make it the duty of county and city boards of education to see that school funds are audited. However, these sections do not require a certified public accountant to be employed. It would seem that all that is required is for the school board to employ a person capable of doing the work.

MUNICIPALITIES; DUTY TO CONSTRUCT SEWER

8 July 1952

A municipal corporation has no duty, in the absence of compulsory statutory requirement, to construct or otherwise provide sewers or drains, and it is not liable for injuries caused by a failure to construct such improvements.

CORONERS; AUTHORITY TO HOLD INQUEST IN GREAT SMOKY
MOUNTAIN NATIONAL PARK

9 July 1952

A coroner has no authority to hold an inquest within the Great Smoky Mountain National Park area since the jurisdiction of State officers appears to be limited to the right of service of civil or criminal process for crimes or causes of action arising outside of the Park area.

MUNICIPAL CORPORATIONS; PUBLIC NUISANCE; ABATEMENT

9 July 1952

Municipal corporations have power to abate nuisances in a summary manner but where the nuisance consists in the operation of a business inside the corporate limits, it is perhaps a better practice to apply to the court for an injunction instead of proceeding by a prohibitory ordinance or by direct abatement.

(1) MUNICIPAL CORPORATIONS; CITY HALL

(2) LICENSE TAX; FLORISTS

10 July 1952

The State does not levy any privilege license tax on florists. Cities and towns have general authority to levy privilege license taxes and would be authorized to levy a privilege license tax on florists.

AD VALOREM TAXATION; PERSONAL PROPERTY; LISTING AND ASSESSING;
PROPERTY DESTINED FOR SHIPPING OUT OF THE STATE BUT STILL IN
HANDS OF SHIPPER AS OF JANUARY 1ST

10 July 1952

Personal property stored in a warehouse on January 1st is subject to ad valorem taxation even though such property has been sold to a non-resident prior to such date.

AD VALOREM TAXATION; EXEMPTIONS; CITY-OWNED PARKING LOT;
RIGHT OF COUNTY TO EXEMPT

11 July 1952

A city-owned public parking lot is exempt from county ad valorem property taxes.

COUNTIES; COURTHOUSE ANNEX; CONTRACT FOR CONSTRUCTION

11 July 1952

G. S. 153-130 provides that no contract requiring the payment of money shall be made unless provision for the payment thereof has been made by an appropriation resolution. This statute requires the county commissioners to make an appropriation and to balance the budget by revenues either on hand or reasonably anticipated by the time they are needed. Before the commissioners can let such contract, the full amount of money required to complete the project must be either on hand or reasonably anticipated from revenues to come in by the time they are needed. See JACKSON v. COMMISSIONERS, 171 N. C. 379.

INCOME TAX; FOREIGN CORPORATIONS; FOREIGN COMPANIES; DIVIDENDS;
SHARES OWNED BY NORTH CAROLINA RESIDENT

14 July 1952

A North Carolina resident, although an alien would be liable for income tax on income received in the form of dividends from shares of stock in British Commonwealth companies, some of which are in England and some in Australia.

ELECTION LAWS; CHAPTER 209, SESSION LAWS OF 1951 PLACES GRAHAM
COUNTY UNDER STATE-WIDE PRIMARY LAW

14 July 1952

Chapter 209, Session Laws of 1951 places Graham County under the state-wide primary law. Under G. S. 163-119, 163-135 and 163-128, all candidates for township offices of Graham County are required to be nominated in the Primary and to file notice of candidacy and pledge and pay filing fees as set out in the statute. Candidates not complying with the foregoing provisions are not eligible to have their names placed on the ballot to be voted for in the general election. McLEAN v. DURHAM COUNTY BOARD, 222 N. C. 6.

CONSTITUTIONAL LAW; EVIDENCE; ADMISSIBILITY OF BLOOD SAMPLES TAKEN
FROM DEFENDANT WITHOUT HIS CONSENT, TO DETERMINE
ALCOHOLIC CONCENTRATION

14 July 1952

Evidence as to the alcoholic content in a person's blood obtained by violence and without his consent would probably not be admissible in the light of a recent decision of the Supreme Court of the United States (Rochin v. Calif., 72 Sup. Ct. Rep. 205) as a conviction based on evidence obtained in such a manner violates the due process clause of the Fourteenth Amendment.

MUNICIPALITIES FURNISHING WATER TO NONRESIDENT CONSUMERS; RATES
TO BE CHARGED TO CONSUMERS OUTSIDE CORPORATE LIMITS

14 July 1952

G. S. 160-255 authorizes a municipality to maintain its own water-works system and to furnish water to the city and its citizens and to any person, firm, or corporation, desiring the same outside the corporate limits where the service is available.

G. S. 160-256 specifically provides that for service supplied outside the corporate limits, the governing body may fix a different rate from that charged within the corporate limits.

HOUSING AUTHORITIES; CONTRACTS; G. S. 143-132 (REQUIRING THREE
BIDS); MANDATORY OR DIRECTORY

14 July 1952

G. S. 143-132 provides that no contracts to which G. S. 143-129 applies shall be awarded unless at least three competitive bids have been received. Since the law does not require the impossible, it is thought the public authority may let bids to the lowest responsible bidder with only two

bids when it has been ascertained that it is impossible to get three bids, provided the lowest responsible bid is within the appropriation. The public interest requires that the projects be constructed after a reasonable effort has been made to comply with the statute, and to that extent it would seem that the provisions of G. S. 143-132 are directory and not mandatory.

COURTS; JUSTICES OF THE PEACE; COLLECTING AGENCIES

15 July 1952

G. S. 66-41 provides that any person operating a collection agency shall receive from the Insurance Commissioner permit to engage in such business. G. S. 105-45 requires each collection agency to receive from the Commissioner of Revenue a State license for the privilege of engaging in such business and pay a tax of \$50. This section also provides that cities and towns may levy a license tax not in excess of that levied by the State.

It is doubtful that a justice of the peace can operate a collection agency without violating some of the sections in Chapter 84 of the General Statutes as to the illegal practice of law.

JUSTICES OF THE PEACE; JURISDICTION IN COUNTY OUTSIDE OF TOWNSHIP

15 July 1952

Under G. S. 7-127 and 7-129, justices of the peace have county-wide jurisdiction. However, a justice of the peace may not be compelled to try a cause outside the township for which he was elected or appointed.

COUNTIES; INSANE PERSONS; EXPENSE OF RETURNING INMATE TO STATE HOSPITAL

15 July 1952

G. S. 122-27 provides that the expense of returning to the hospital an inmate who has escaped from a State Hospital shall be borne by the county of such inmate's legal settlement. That seems to mean the county where he had acquired the right to assistance under the poor laws. Black's Law Dictionary, page 1613; Bouvier's Law Dictionary, page 516.

An insane person is incapable of changing his legal settlement. COMMISSIONERS OF McDOWELL COUNTY v. COMMISSIONERS OF FORSYTH COUNTY, 121 N. C. 295; COMMISSIONERS OF BURKE COUNTY v. COMMISSIONERS OF BUNCOMBE COUNTY, 101 N. C. 520.

CRIMINAL LAW; FALSE PRETENSE

16 July 1952

A false pretense can be committed by conduct as well as by verbal representations.

COURTS; JUSTICES OF THE PEACE; CHIEF OF POLICE SERVING AS
JUSTICE OF THE PEACE

16 July 1952

There is no constitutional provision against a chief of police acting in the capacity of justice of the peace, but the practice of uniting executive, administrative and judicial officers in the same person should not be followed. Until the Supreme Court holds to the contrary, a search warrant issued by a chief of police who is at the same time a justice of the peace and served by one of his officers should be considered as valid.

ELECTIONS; COMPENSATION OF PRECINCT OFFICIALS; ALLOWANCE OF MILEAGE

16 July 1952

The board of county commissioners has the discretion to allow registrars mileage on days when meetings are called pursuant to their duties as registrars under the last proviso contained in G. S. 163-20.

AD VALOREM TAXES; PENALTIES AND INTEREST; RECEIVERSHIP PRIORITIES

16 July 1952

Interest accruing on ad valorem taxes prior to the appointment of a receiver for the taxpayer is a valid claim of the City and is entitled to the same preferred status as the tax with respect to which the interest accrues.

MUNICIPALITIES; VACANCY ON BOARD OF COMMISSIONERS FILLED BY
REMAINING MEMBERS FOR UNEXPIRED TERM

17 July 1952

The Charter of the Town of Dublin is contained in Chapter 23, Private Laws, Extra Session 1913. Section 9 thereof provides that the town commissioners shall fill all vacancies in the offices of said town caused by failure to qualify, resignation or otherwise. G. S. 160-8 provides that in the case of all municipalities governed by general law, vacancies in the office of commissioner are filled by appointment of remaining commissioners. G. S. 160-25 requires a town commissioner to be a qualified voter within the town. When a commissioner removes from a town, that creates a vacancy in the office. Article 2, Chapter 128 of the General Statutes provides the machinery for the removal from office of certain officials. The town commissioner is not included in this list.

ELECTION LAWS; QUALIFICATIONS FOR VOTING; ABSENTEE
BALLOTS IN GENERAL ELECTION

17 July 1952

Article VI, Section 2, of the State Constitution provides that a qualified voter shall reside in the State for one year and in the precinct, ward or

other election district in which he offers to vote for four months next preceding the election. The Supreme Court construes "residence" as used in this section as synonymous with domicile, denoting a permanent dwelling place to which the party when absent always intends to return. *STATE v. GRIZZARD*, 89 N. C. 115; *GOWER v. CARTER*, 195 N. C. 697; *OWENS v. CHAPLIN*, 228 N. C. 705.

CLERK OF COURT; POWER TO ORDER PRODUCTION OF WILL FOR PROBATE

17 July 1952

A Clerk of Court does not have the power to compel production of a will for probate on his own motion, but he acts only on the application by affidavit of a person interested in the estate. While an unprobated will is in existence, letters of administration cannot issue.

COUNTIES; SALE OF PART OF THE COURTHOUSE PROPERTY

17 July 1952

Under G. S. 153-9 (14) county commissioners are authorized to lease or sell its real property at private sale. G. S. 160-59 applies to municipalities only. Following the reasoning in *SOUTHPORT v. STANLY*, 125 N. C. 464, the Supreme Court would probably not permit a county to sell, without a special act of the Legislature, its courthouse, jail or other property essential to the functioning of the county government. As to surplus property, it is thought the commissioners may sell the same at private sale after the adoption of a resolution finding as a fact that the property in question is not needed for any public purpose.

COURTS; RIGHT OF CLERK OF MUNICIPAL COUNTY COURT TO RETAIN FEES COLLECTED FOR REPORTING CONVICTIONS TO DEPARTMENT OF MOTOR VEHICLE

17 July 1952

The Municipal County Court of Kinston (Lenoir County), established under Chapter 233, Public Laws of 1925, provides that all costs collected for criminal violations occurring within the limits of the town involved shall be paid into the town treasury, and for all violations occurring outside the town, costs are paid into the county treasury. G. S. 20-24 (b) requires the clerks of criminal courts to file certain reports with the Department of Motor Vehicles. G. S. 6-1 and G. S. 2-26 set out the costs which may be collected in criminal cases. These statutes do not provide for a fee for making the reports required by G. S. 20-24 (b). Therefore, it is to be doubted that a clerk is authorized to retain from the costs collected a fee for making such report.

COUNTIES; AUTHORITY TO OFFER REWARD FOR APPREHENSION OF CRIMINALS

17 July 1952

It is to be doubted that a county has the authority to offer a reward for the apprehension of criminals. G. S. 153-1; G. S. 153-2 (3); G. S. 153-9; G. S. 15-53. *MADRY v. SCOTLAND NECK*, 214 N. C. 461.

MOTOR VEHICLES; REGISTRATION TAGS; NONRESIDENT ASSUMING
RESIDENCE IN STATE

18 July 1952

A resident of Connecticut who moves to North Carolina with the intention of permanently residing here is not required to procure North Carolina registration plates until he has been in this State for six months, according to the reciprocity agreement between Connecticut and North Carolina.

LICENSE TAXES; COUNTY TAX ON LAUNDRY AND DRIVE-IN THEATER LOCATED
IN COUNTY; SECTIONS 150 AND 104½ OF THE REVENUE ACT

18 July 1952

Counties have no authority to levy privilege taxes on laundries located within the county or on drive-in theaters located within the county.

AD VALOREM TAXES; REAL PROPERTY OR PERSONAL PROPERTY; POWER
TRANSMISSION AND DISTRIBUTION SYSTEMS; DISTRIBUTION
TRANSFORMERS; STREET LIGHTING SYSTEMS

18 July 1952

Power transmission lines, distribution systems and lines, sub-stations, transformers, materials and service lines permanently affixed to the soil should be treated as real property rather than personal property for ad valorem property tax purposes.

INCOME TAXES; DEDUCTIONS; CONTRIBUTIONS

18 July 1952

A donation to a corporation engaged exclusively in operating recreational facilities for use without charge by the children of the entire community is a contribution deductible for income tax purposes by the donor.

GENERAL ADMINISTRATION; DISCLOSURE OF INFORMATION

18 July 1952

The Department of Revenue is forbidden by Section 928 of the Revenue Act to furnish to an individual or firm, or to a local Chamber of Commerce, a list of persons who have procured licenses under Schedule "B".

EUGENICS; STERILIZATION; LIABILITY OF DOCTOR PERFORMING
CONSENT OPERATION

18 July 1952

Health Officers should not advise physicians to perform sterilization operations, even though consent is obtained from the patient or those hav-

ing a right to object thereto. It is possible that the Court might hold, in the absence of sound therapeutic reasons, that there was some liability on the part of the physician performing the operation, even though the necessary consents had been obtained.

EMPLOYMENT SECURITY ACT; CRIMINAL PROCEDURE;
INDICTMENT; COMMITMENT

21 July 1952

A person who receives benefits under the Employment Security Law by means of false representations may be indicted under G. S. 96-18 for each week that such benefits are received under such representations, and the complete number of weeks involved may be consolidated in one warrant, with separate counts. The commitment may be issued so as to cover all of the sentences of imprisonment and each week, and they may be made consecutive and contained in the same commitment.

MOTOR VEHICLES; SPEED LIMIT; MUNICIPAL REGULATIONS

21 July 1952

A municipality may fix a speed limit of not less than 25 MPH upon streets which are not part of the State Highway system and are not maintained by the State Highway and Public Works Commission. Appropriate signs must be erected before such ordinance becomes effective.

SCHOOLS; CONVEYANCE OF SCHOOL PROPERTY BY COUNTY BOARD OF
EDUCATION TO TRUSTEES OF CITY ADMINISTRATIVE UNIT UPON
CONSOLIDATION WITH CITY ADMINISTRATIVE UNIT

21 July 1952

G. S. 115-352 provides that title to school property within a City Administrative Unit shall be held by the trustees. When a school district in a county administrative unit is consolidated with a city administrative unit, it may be that title is automatically transferred to the trustees of a city administrative unit. However, in the absence of such express statutory provision, it is suggested that a state-wide statute be passed authorizing a conveyance of title under such circumstances.

DOUBLE OFFICE HOLDING; MEMBER COUNTY ABC BOARD;
MEMBER LOCAL SCHOOL COMMITTEE

21 July 1952

Membership on a local school committee and on a county ABC Board are both public offices within the contemplation of Article XIV, Section 7, of the State Constitution. See G. S. 115-131 and G. S. 18-41.

MUNICIPALITIES; FURNISHING WATER TO NONRESIDENT CONSUMERS; RATES
TO BE CHARGED TO CONSUMERS OUTSIDE CORPORATE LIMITS

21 July 1952

G. S. 160-255 authorizes a municipality to maintain its own waterworks system and to furnish water to the city and its citizens and to any person, firm, or corporation, desiring the same outside the corporate limits where the service is available.

G. S. 160-256 specifically provides that for service supplied outside the corporate limits, the governing body may fix a different rate from that charged within the corporate limits.

CRIMINAL LAW; AIDING AND ABETTING IN THE COMMISSION
OF A MISDEMEANOR

22 July 1952

All who aid and abet in the perpetration of a misdemeanor may be charged in the bill of indictment as principals, and upon conviction punished as principals.

MARRIAGE LICENSES; FEES

22 July 1952

Under G. S. 51-20, a tax of \$4.00 is prescribed for the issuance of a marriage license. In addition to this, G. S. 161-10 prescribes a fee of \$1.00 for the issuance of a marriage license.

REGISTER OF DEEDS; REGISTRATION OF SEPARATION PAPERS OF VETERANS

22 July 1952

A report of separation and a discharge from the armed services are, in effect, one and the same thing. A report of separation gives more detailed information with respect to the military record of the person separated than does an official discharge. Either or both of these papers should be recorded by a register of deeds.

TOURIST CAMPS, INNS, ETC.; REGISTRATION REQUIREMENTS;
SEARCH WARRANTS

22 July 1952

It is seriously doubted if a search warrant would be the proper method of searching a tourist camp which is suspected of operating for immoral purposes.

MUNICIPAL CORPORATIONS; LEASING TOWN PROPERTY WITHOUT
ADVERTISING FOR BIDDERS

22 July 1952

G. S. 160-59 provides that municipalities shall have power to sell at public outcry after thirty days notice to the highest bidder any property, real or personal, belonging to such municipality. G. S. 160-2 (6) authorizes municipalities to sell or lease any waterworks, lighting plants, gas or electric, *or any other public utility* which may be owned by such municipality, provided such sale or lease shall be approved by a majority of the voters of the municipality. A Marina or Yacht Basin was constructed by a certain municipality with monies derived from a loan which is being repaid from the income derived from operating the Marina. Under the circumstances, the courts would likely hold that the Marina is a public utility within the contemplation of G. S. 160-2 (6). Hence, it is doubtful that the municipality has the right to lease the Marina for a term of ten years with a right of renewal without complying with the provisions of G. S. 160-59 and probably with the provisions of G. S. 160-2 (6). American Jurisprudence, Municipal Corporation, Section 559, page 246; American Jurisprudence, Public Utilities, Section 2, pages 571 and 572; TAYLOR v. COMMISSIONER OF NEW BERN, 55 N. C. 141.

MUNICIPAL CORPORATIONS; BOXING COMMISSION; SURPLUS FUNDS

22 July 1952

Chapter 142 of the Private Laws of 1931, which establishes a Boxing Commission for the City of Gastonia, does not authorize the Commission to maintain an operating fund; therefore, since the Commission is an agency of the City of Gastonia, all surplus funds remaining in the hands of the Commission should be turned over to the general fund of the City of Gastonia.

LICENSE TAXES; MUNICIPAL LICENSE TAXES; POOL ROOMS; SECTION 129 (C);
EXPIRATION OF MUNICIPAL LICENSE YEAR; SECTION 100 (B);
NO DAYS OF GRACE

23 July 1952

The State Revenue Act does not provide any "days of grace" for renewing annual privilege licenses. However, the civil penalty for failure to secure a new license after the old one expires is assessed in terms of thirty-day periods and thus the fact that no civil penalty can be assessed until the expiration of the first thirty days may have given rise to the belief that there is a thirty-day period of grace.

SCHOOLS; ELECTION OF MEMBERS OF BOARD OF EDUCATION IN POLK COUNTY

23 July 1952

Chapter 698, Session Laws of 1949, provided that members of the Board of Education of Polk County would be elected directly by the people. This Act was repealed by Chapter 490, Session Laws of 1951, ratified March 30th 1951 and appointing five persons to constitute said Board of Education. This Act was then repealed by Chapter 1117, Session Laws of 1951 (the Omnibus Boards of Education Bill). However, this Act appointed for terms of two years the same people who had previously been appointed in the Act ratified on March 30th.

PRIMARY ELECTIONS; PARTY AFFILIATION OF CANDIDATES

23 July 1952

G. S. 163-119 provides that no person shall be permitted to file as a candidate of any political party in the party primary when such person is at the time registered as an affiliate of a different political party from that party in whose primary he is attempting to file as a candidate. This section further provides that any unregistered person who desires to become a candidate in a party primary may do so if he signs a written pledge with the chairman of the Board of Elections, stating that he will register as an affiliate of the political party in whose primary he now intends to run as a candidate. It would seem that persons who fail to comply with the foregoing provisions are not entitled to have their names appear as candidates on the general election ballot.

COURTS; CRIMINAL PROCEDURE; ARREST; JURISDICTION
OF RECORDER'S COURTS

23 July 1952

G. S. 18-45 (o) adopts the common law doctrine of hot pursuit as to persons found to be violating the prohibition laws of this State. Under this doctrine it is thought that the sheriff of Rockingham County and his deputies had the right to pursue the offender into Caswell County and arrest him there. It would also seem that the defendant was guilty of a violation of the prohibition laws in each county and that charges may be preferred against him in both counties, and that the court first acquiring jurisdiction would have authority to order the automobile confiscated.

SCHOOLS; TRANSFER OF FAMILIES FROM NONLOCAL TAX DISTRICTS TO
LOCAL TAX OR CITY ADMINISTRATIVE UNIT

23 July 1952

It is thought that Chapter 1169, Session Laws of 1951, a Public-Local Act for Orange County, does not affect the right of the city, county and

state boards of education to transfer families from nonlocal tax districts to local tax or city administrative units as provided for in G. S. 115-100.

COUNTIES; BUDGET; USE OF SURPLUS FUNDS FOR ANIMAL
SHELTER AND DETENTION HOME

24 July 1952

G. S. 67-32 authorizes county commissioners in each county in which a dog warden is appointed under Article 5, Chapter 67 of the General Statutes to establish and maintain a dog pound. G. S. 110-30 authorizes county commissioners to make provision for the temporary detention of children subject to the jurisdiction of the juvenile or the domestic relations court in a detention home to be conducted as an agency of the court. G. S. 153-124 directs county commissioners in passing the appropriation resolution in making the budget to take into consideration in the budget estimate surplus revenues and unencumbered balances carried over from the preceding fiscal year.

From the foregoing it would seem that the county commissioners are justified in appropriating a general fund surplus and an unencumbered balance in various special funds for the purpose of providing an animal shelter and a detention home in conformity with the provisions of the above statutes.

ELECTIONS; COMPENSATION OF CHAIRMAN OF COUNTY BOARD OF ELECTIONS

24 July 1952

It is the general practice throughout the State for the chairmen and members of the various county boards of elections to claim compensation under G. S. 163-12 during the period of time when actual duties are required of them in their official positions for the holding of primaries and elections. It seems to be customary for the chairmen and members to make their charges on such a per diem basis that will fairly compensate them for the total time they are required to devote to the duties of their offices and in such amounts as will be approved by the boards of county commissioners after discussion and consultation.

DOUBLE OFFICE HOLDING; CHAIRMAN OF COUNTY BOARD OF ALCOHOLIC
CONTROL; MEMBER OF MUNICIPAL AIRPORT COMMISSION

24 July 1952

The office of chairman of a county board of alcoholic control and that of being a member of a municipal airport commission are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding.

MUNICIPAL CORPORATIONS; RIGHT OF MAYOR TO VOTE AT MEETINGS OF
TOWN COMMISSIONERS; VACANCIES ON BOARD

24 July 1952

The mayor of a municipality may not vote on matters which come before the governing body except in case of a tie.

In case of a vacancy on the board of commissioners, the remaining commissioners may fill the same under G. S. 160-10.

MUNICIPALITIES; GARBAGE DISPOSAL; AUTHORITY TO MAKE
COLLECTIONS OUTSIDE CITY LIMITS

25 July 1952

G. S. 160-55 and G. S. 160-200 (26) expressly authorize municipalities to pass ordinances for abating or preventing nuisances and for preserving the health of its citizens. G. S. 160-233 expressly authorizes municipalities to provide for the removal of garbage and to charge for such removal the actual expense thereof. G. S. 160-234 authorizes municipalities to cause to be removed, abated or remedied anything within a mile of such limits which is dangerous or prejudicial to public health. G. S. 160-203 provides that city ordinances enacted in the exercise of police power for sanitary purposes shall apply to territory outside the city limits and within one mile in all directions thereof.

From the foregoing it is thought that the Town of Highlands may by ordinance provide for the removal of garbage from homes and businesses located outside the corporate limits and within one mile in all directions; and that the ordinance may authorize the city to charge for such removal the actual expense thereof.

The collection of garbage, in conformity with the provisions of a valid ordinance, is a governmental as opposed to a private function and the city is not liable for negligence of the driver of garbage truck while acting within the course of the employment. *JAMES v. CHARLOTTE*, 183 N. C. 630.

N. C. STATE PORTS AUTHORITY; MOREHEAD CITY PORT COMMISSION; RETENTION AND EXPENDITURE OF FUNDS RETAINED BY PORT COMMISSION

25 July 1952

The Morehead City Port Commission is authorized by an Act of the General Assembly and by contract with the State Ports Authority to retain \$8,807.78 surplus earned prior to December 1, 1949. All of the functions and duties of the Morehead City Port Commission are transferred to the State Ports Authority by 1951 Act except such duties as may be assigned to them by the State Ports Authority. The said funds retained by the Port Commission can be expended only for such purposes as may be approved and directed by the State Ports Authority.

DOUBLE OFFICE HOLDING; TOWN CLERK AND SCHOOL COMMITTEEMAN;
QUO WARRANTO PROCEEDINGS

25 July 1952

The sole method by which the title to a public office may be tested is by the institution of quo warranto proceedings instituted by a private person in the name of and with the permission of the Attorney General. G. S. 128-2 prescribes the penalty for a violation of Article XIV, Section 7, of the Constitution, which prohibits double office holding.

SCHOOLS; ELECTION OF PRINCIPALS AND TEACHERS; REMOVAL OF
MEMBERS OF LOCAL SCHOOL COMMITTEE

25 July 1952

If a local school committee fails or refuses to elect a principal or teachers, the county board of education has the right to elect in such case. G. S. 115-354. A county board of education has the right to remove school committeemen for cause and after a fair and impartial hearing. *RUSS v. BOARD OF EDUCATION*, 232 N. C. 128.

SCHOOLS; RESIGNATION OF TEACHERS; REMOVAL OF TEACHERS

25 July 1952

G. S. 115-77 gives to county boards of education the power to investigate and pass upon the moral character of any teacher and to dismiss such teacher if found of bad moral character. G. S. 115-117 authorizes a county superintendent to suspend any teacher who may be incompetent or who shall willfully refuse to cooperate in teachers' meetings. Such suspended teacher has the right to appeal either to the county board of education or to the courts.

DIVORCE; INSANE PERSONS

28 July 1952

In all cases where a husband and wife have lived separate and apart for ten consecutive years, without cohabitation, and are still so living separate and apart by reason of the incurable insanity of one of them, the court may grant a decree of absolute divorce upon the petition of the sane spouse: Provided, the evidence shall show that the insane spouse is suffering from incurable insanity, and has been confined for ten consecutive years next preceding the bringing of the action in an institution for the care and treatment of the mentally disordered.

LICENSE TAXES; CHAIN STORE TAX; WHOLESALE BUSINESS
AND RETAIL STORE; SECTION 162

28 July 1952

The chain store tax is applicable when two businesses are carried on by the same owner even though one is wholesale and the other is retail provided the businesses are similar in character. For example, if the same owner operates a wholesale grocery business at one location and a retail grocery business at another location, he is subject to the chain store tax. On the other hand, if the same owner operates a wholesale grocery business at one location and a retail shoe store at another location, the chain store tax is held not to be applicable.

PUBLIC HEALTH; RABIES; VACCINATION OF DOG IN ONE COUNTY
RECOGNIZED IN ANOTHER COUNTY

28 July 1952

Where a dog is vaccinated for rabies in one county and his owner has received a certificate and metal tag, this vaccination should be recognized by the health authorities of another county, and it is not necessary to vaccinate the dog again. The law does not permit vaccinations to be made by persons other than rabies inspectors, and these vaccinations are not recognized as valid vaccinations.

DEPOSITORY FOR WILLS; WITHDRAWAL OF WILL BY DEPOSITOR PENDING
A PETITION FOR LUNACY HEARING; G. S. 31-11

28 July 1952

A testator should be allowed to withdraw a will which has been deposited with the Clerk of the Superior Court for safekeeping pursuant to G. S. 37-11, despite the fact that a petition for an inquisition of lunacy has been filed against him.

SCHOOLS; CURRENT EXPENSE BUDGET; PAYMENT TO ADMINISTRATIVE UNITS
MONTHLY

28 July 1952

G. S. 153-124 provides that in making a tax levy, boards of county commissioners shall take into consideration unencumbered balances carried over from the preceding fiscal year and the estimated miscellaneous revenues from sources other than taxation. G. S. 115-363 requires that all county-wide current expense school funds shall be apportioned to county and city administrative units monthly. These funds include fines and forfeitures. When the amount of fines and forfeitures collected during a fiscal year exceeds the budget estimate, these additional funds remain with

the county treasurer to the credit of the various administrative units on a per capita enrollment basis. This surplus can be taken into consideration for making the budget for the next fiscal year. G. S. 115-363; G. S. 115-368 and SCHOOL TRUSTEES v. BENNER, 222 N. C. 566.

LICENSE TAXES; TRANSFERABILITY; SECTION 100 OF THE REVENUE ACT

29 July 1952

A town license on dry cleaners, pressing clubs, hat blockers, and solicitors for such plants located outside the corporate limits is issued under the authority of Section 139 of the Revenue Act and the town counsel cannot destroy the transferability of that license, in accordance with Section 100 of the Revenue Act.

COUNTY COMMISSIONERS; FISCAL CONTROL; TAX LEVY FOR HOSPITAL;
EXPENDITURE OF FUNDS

29 July 1952

Where a county votes a tax for the upkeep, operation and maintenance of a hospital, it can use funds derived from the tax levy for that purpose and can use any surplus left over from the previous year's tax levy.

MOTOR VEHICLES; REGISTRATION; MOTOR VEHICLE USED BY RESIDENT IN
BUSINESS OUTSIDE OF STATE

29 July 1952

A resident owner of motor vehicles to be operated in a lumber business outside of this State and not intended to be operated on the highways of this State, is not required to register those vehicles.

PRIMARY ELECTIONS; PARTY AFFILIATION OF CANDIDATES

29 July 1952

G. S. 163-119 requires a candidate in a primary election to be registered as an affiliate of the political party in whose primary he files as a candidate. If he is unregistered, he may qualify by signing a written pledge that he will, during the registration period prior to the next primary, register as an affiliate of the political party in whose primary he intends to run as a candidate.

It would seem that a candidate who is registered as an affiliate of a different political party and who participates in the primary of that party is not entitled to have his name appear on the general election ballot.

SCHOOL LAW; TEACHERS; NOTIFICATION OF RE-ELECTION OR REJECTION;
ACCEPTANCE

29 July 1952

When a teacher fails to send notice of acceptance of re-election as a teacher within ten days, his previous contract lapses and it becomes necessary for him to place a new application if he expects to be elected for service in the school again. The procedure is just as though such teacher had never served in the system. G. S. 115-354; *KIRBY v. STOKES COUNTY BOARD OF EDUCATION*, 230 N. C. 619.

A.B.C. BOARD; POWER TO MAKE RULES AND REGULATIONS;
VALIDITY OF REGULATION No. 13

29 July 1952

It would seem that Chapter 974, Session Laws of 1949, repeals by implication, the power of the Commissioner of Revenue to make rules and regulations with regard to the sale of malt beverages as referred to in G. S. 18-69.1.

AD VALOREM TAXES; GARNISHMENT; PROCEDURE

30 July 1952

In garnishing for ad valorem taxes pursuant to G. S. 105-385 (d), the tax collector should issue the notices to be served upon the garnishee and the delinquent taxpayer.

WILLS; PROBATE; JOINT WILLS

30 July 1952

While our Supreme Court at one time held that joint wills are invalid, this position has now been reversed. See: *CLAYTON v. LIVERMAN*, 19 N. C. 558; *In Re: Davis' Will*, 120 N. C. 9; *In Re: Coles' Will*, 171 N. C. 74; *GINN v. EDMUNDSON*, 173 N. C. 85.

G. S. 31-39 provides that no will shall be effectual to pass title to real or personal property until it has been probated in the proper county. *OSBORNE v. LEAK*, 89 N. C. 433; *PAUL v. DAVENPORT*, 217 N. C. 154.

When a joint will has already been probated as the will of the husband and the wife later dies, it is necessary for the joint will to be again probated in order to pass title to the wife's property conveyed by the will.

POWELL BILL; USE OF FUNDS FOR ADVANCES TO BE REFUNDED
FOR STREET ASSESSMENTS

30 July 1952

Powell Bill Funds may be used to advance cost for paving streets to be reimbursed for street assessments against the abutting property owners.

REGISTER OF DEEDS; FILING INSTRUMENT FOR REGISTRATION; WHEN INSTRUMENTS ARE FILED; DUTY OF REGISTER OF DEEDS RECEIVING INSTRUMENT WITH NO ORDER OF PROBATE OR ORDER OF REGISTRATION

30 July 1952

A register of deeds does not have to receive an instrument for filing and registration until an order of registration and the probate of the instrument has been properly entered by the clerk. An instrument received by the register of deeds without such order of probate and registration is not received in a legal sense for filing and registration and cannot be considered filed for registration until the clerk enters the order of probate and registers and returns the instrument to the register of deeds.

CONSTITUTIONAL LAW; PRIVATE LEGISLATION RELATING TO LAYING OUT OR ALTERING ROAD OR HIGHWAY

30 July 1952

Where a town is authorized by a public-local act to exchange certain property with landowners for the purpose of straightening out a street, and the town having authority under the general law to alter and change streets, the constitutional presumption of validity should be followed and any doubt resolved in favor of the constitutionality of the act.

LICENSE TAXES; EXEMPTIONS; DISABLED VETERANS

31 July 1952

The State does not impose any State license tax with respect to engaging in the business of painting signs. There is no general law exempting disabled War Veterans from the payment of town license taxes.

AD VALOREM TAXES; EXEMPTIONS; BUILDING LEASED TO HOSPITAL CORPORATION

31 July 1952

A building owned by a private person or corporation is not exempt from county ad valorem property taxes merely because such property is leased to a hospital corporation which uses the building for hospital purposes.

WILLS; ESTATES; FORFEITURES; CONDITIONS SUBSEQUENT

1 August 1952

A clause in a will or deed will not be construed as a condition subsequent unless it expresses in apt and appropriate language the intention of the parties to this effect and a mere statement of the purpose for which

the property is to be used is not sufficient to create such a purpose. To constitute a condition subsequent there must be a reverter clause either express or arising by clear implication. *ST. JAMES CHURCH v. BAGLEY*, 138 N. C. 384; *GRACE CHURCH v. ANGE*, 161 N. C. 315; *GOLD v. COZART*, 173 N. C. 612; *SHIELDS v. HARRIS*, 190 N. C. 520; *CHURCH v. REFINING COMPANY*, 200 N. C. 469; *SHAW UNIVERSITY v. INSURANCE COMPANY*, 230 N. C. 526.

DOUBLE OFFICE HOLDING; TOWNSHIP CONSTABLE AND CHIEF OF POLICE

1 August 1952

The office of township constable and that of chief of police of a municipality are both public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

SALES AND USE TAX; EXEMPTIONS; COUNTY T. B. ASSOCIATIONS, SALES TO

4 August 1952

A county tuberculosis association engaging in educational work, in financing treatment, and in X-raying interested citizens, etc. to the end that tuberculosis may be controlled is exempt from the payment of sales tax pursuant to Section 406 (q) of the Revenue Act.

STATE BONDS OF THE YEARS 1868 AND 1869

4 August 1952

State bonds for the years 1868 and 1869 are without value. Article I, Section 6, Constitution of North Varolina. *BALTZER v. THE STATE*, 104 N. C. 265. *BALTZER v. NORTH CAROLINA*, 161 U. S. 240.

SCHOOL LAW; TEACHERS; METHOD OF RE-ELECTION

4 August 1952

It would seem that the election of a teacher is valid when such teacher has been elected by the district committee and approved by the county superintendent and the county board of education. *G. S. 115-112*. However, to complete the records such teachers should file an application with the county superintendent, which application can be dated back to a time prior to the election by the district committee. *G. S. 115-359; 115-141; 115-354*. *BOARD OF EDUCATION v. DICKSON*, 235 N. C. 359.

PRIMARY ELECTIONS; PARTY AFFILIATION OF CANDIDATES; WHEN VACANCIES MAY BE FILLED BY PARTY EXECUTIVE COMMITTEE

4 August 1952

Under *G. S. 163-145* the county executive committee is permitted to fill a vacancy in the nomination of its party candidate for a county office, in

case such candidate should die, resign or for any reason become ineligible or disqualified between the date of the primary and the ensuing general election. However, this provision would not seem to be applicable to the case in which the candidate is disqualified at the time he files; he being registered as an affiliate of a different political party or not being registered at all, and having failed to take the pledge required by G. S. 163-119.

SCHOOL LAW; RIGHT OF SCHOOL BOARDS TO USE UNLICENSED MAINTENANCE
FOREMEN AND MAINTENANCE CREW TO DO ELECTRICAL,
HEATING, PLUMBING, ETC., WORK

4 August 1952

Regularly employed maintenance foremen and maintenance crew of school boards may do plumbing, heating, electrical, etc., work for schools without taking contractor's licensing examinations and procuring contractor's licenses.

ADOPTION; CONSENT; ONE PARENT HOPELESSLY INSANE

4 August 1952

Where one of a child's parents is hopelessly insane, the adoption law does not provide for any method of dispensing with this parent's consent.

NAMES OF PERSONS; CHANGE OF NAMES UNDER CHAPTER 101 OF THE
GENERAL STATUTES; ABANDONMENT OF APPLICANT BY FATHER

4 August 1952

In order to change the name of a minor under Chapter 101 of the General Statutes, the application must be signed by both parents, and the fact that the father of the child has abandoned the child and has not been heard of does not authorize the applicant's petition to be signed by the mother alone, the seven years raising a presumption of death having not elapsed.

MARRIAGE LAWS; VALIDITY OF MARRIAGES IN A FOREIGN COUNTRY

4 August 1952

A marriage legally performed in a foreign country will be recognized as valid in the State of North Carolina.

ELECTION LAWS; VOTING BOOTHS; ACQUISITION OF BUILDINGS IN WHICH
ELECTIONS ARE TO BE HELD

4 August 1952

It is the duty of a county board of elections to provide buildings in which elections are to be conducted.

MUNICIPAL CORPORATIONS; FISCAL CONTROL ACT; DEPOSITORY
FOR TOWN FUNDS

4 August 1952

The County Fiscal Control Act is applicable to municipalities with the exception that the County Fiscal Control Act does not apply to municipalities in those matters relating to the maintenance of schools for the constitutional terms, depositories, and security for deposits.

SALES AND USE TAX; OUT OF STATE VENDOR; FAILURE TO COLLECT USE
TAX; SUBSEQUENT RIGHTS AGAINST VENDEE

4 August 1952

The right of one state to compel a merchant in another state to collect a use tax on goods sold by such merchant for use in the taxing state was sustained by the U. S. Supreme Court in the case of GENERAL TRADING COMPANY v. TAX COM. 322 U. S. 335; 88 L. Ed. 1309 (1944).

GARNISHMENT; MINIMUM SALARY SUBJECT TO GARNISHMENT;
AMOUNT WHICH MAY BE GARNISHED

5 August 1952

Two provisions of G. S. 105-242 set forth the limitations with respect to the minimum salary which may be subject to garnishment for taxes and the specific amount which may be garnished. In one place it is stated:

"... Provided, however, that no salary or wage *at the rate* of less than two hundred dollars (\$200.00) per month, whether paid weekly or monthly, shall be attached or garnished under the provisions of this section." (*Italics added.*)

In another place it is stated:

"... nor shall more than ten per cent of any taxpayer's salary or wages be required to be paid hereunder in any one month."

The first provision quoted above is in the nature of a qualifying condition. That is, a salary or wage must be at the rate of \$200.00 per month before any of the salary or wage is subject to garnishment. I do not interpret this to mean that a person must, in fact, earn more than \$200.00 in a given month before any part thereof is subject to garnishment. I think the key words are the words in italic above "*at the rate*". Thus, to illustrate, when a person is paid at the rate of \$2.00 per hour for regular time up to forty hours a week and \$3.00 per hour for overtime up to five hours per week and the contemplated work week is forty-five hours, then, in such case, that person when he works and earns any compensation, is earning the same *at the rate* of more than \$200.00 per month. I think the statute is designed to protect not those who, in fact, earn less than \$200.00 a month by reason of working only a part of a month, but

rather to protect a person whose rate of pay would not earn him as much as \$200.00 for a *whole* month. The primary protection afforded an employee with respect to garnishment for taxes is contained in the second statutory provision set out above in that the amount garnished in any one month is restricted to 10%.

LICENSE TAXES; EXEMPTION OF DISABLED VETERANS;
SECTION 121 OF THE REVENUE ACT

5 August 1952

No specific degree of disability is required for Veterans to be exempted from peddlers licenses, and the determination of the Board of County Commissioners governs. A suggested test is whether the disability materially affects his ability to work in a normal occupation.

EMINENT DOMAIN; AUTHORITY OF CITY OF LEXINGTON AND THE STATE
HIGHWAY AND PUBLIC WORKS COMMISSION TO CONDEMN PROPERTY
FOR THE PURPOSE OF WIDENING STREETS THAT FORM
PART OF THE STATE HIGHWAY SYSTEM

5 August 1952

Either the State Highway and Public Works Commission or the governing body of a municipality may institute condemnation proceedings to acquire private property within the city limits of a municipality for the purpose of widening a street that forms a part of the State Highway System.

- (1) ARRESTS; AUTHORITY OF A PRIVATE CITIZEN TO MAKE AN ARREST
- (2) WEAPONS; CARRYING WEAPONS CONCEALED

5 August 1952

Every person present at any riot, rout, affray or other breach of the peace, shall endeavor to suppress and prevent the same, and, if necessary for that purpose, shall arrest the offenders.

A person may legally carry a weapon in an open holster about his person provided the weapon is not concealed.

DEPUTY CLERK SUPERIOR COURT; ELIGIBILITY OF NONRESIDENT
TO HOLD OFFICE

5 August 1952

In order for a person to serve as a deputy clerk of a superior court, he must be a resident of the county in which the appointment is to be made.

MUNICIPALITIES; AUTHORITY TO APPOINT POLICE OFFICER;
CIVIL LIABILITY FOR ACTS OF POLICE OFFICER

5 August 1952

Section 8 (a) of the charter of Bessemer City, Chapter 30, Private Laws of 1913, provides that policemen shall be appointed by the Town Commissioners to hold at the pleasure of the Board, but for not longer than the term of office of the Commissioners who appoint them. G. S. 160-9 and 160-20 contain substantially the same provisions as to municipalities not governed by some special act.

Under the foregoing, it would seem that the police commissioner of Bessemer City does not have authority to appoint or discharge police officers.

A municipality is not liable for the negligence of a police officer in the enforcement of criminal law. Of course the officer is personally liable. *MOFFITT v. ASHEVILLE*, 103 N. C. 237; *COLEY v. STATESVILLE*, 121 N. C. 301; *McILHENNEY v. WILMINGTON*, 127 N. C. 146; *HOBBS v. WASHINGTON*, 168 N. C. 293; *PARKS v. PRINCETON*, 217 N. C. 361; *GENTRY v. HOT SPRINGS*, 227 N. C. 665.

CONFEDERATE BONDS

5 August 1952

Confederate bonds issued by the State of North Carolina are without value. Section 6, Article I, Constitution of North Carolina; Section 12, Article VII, Constitution of North Carolina; Section 4, Fourteenth Amendment to the Constitution of the United States. These bonds may have value as collectors' items.

MOTOR VEHICLES; OVERLOADING

5 August 1952

When a vehicle is found to be overloaded under G. S. 20-96, the statutory penalty is mandatory and the Commissioner has no authority to waive or reduce the penalty even though a violation was not intentional.

CONSTABLE; AUTHORITY TO SERVE PROCESS ANYWHERE WITHIN COUNTY

6 August 1952

Section 3, Chapter 275, Public-Local Laws of 1931 provides that all civil process issuing out of courts of justices of the peace in Asheville Township shall be delivered to and served by the Constable of Asheville Township or his agent. This provision is in conflict with the provisions of Article IV, Section 24 of the Constitution of North Carolina and with G. S. 151-7. While an act of the Legislature is presumed to be valid until a

court of competent jurisdiction shall hold otherwise, it is thought that the public-local statute cannot render invalid service of process in Asheville Township by the sheriff or one of his deputies or by the Constable of another township. STATE v. CORPENING, 207 N. C. 805.

JUSTICES OF THE PEACE; HOLDING COURT OUTSIDE OF TOWNSHIP

6 August 1952

The statutes relating to the jurisdiction of a justice of the peace do not contemplate that a justice of the peace elected for one township could set up his office and perform his duties in another township.

TRUSTEES; NONRESIDENT; AUTHORITY OF CLERK TO APPOINT

7 August 1952

In order to appoint a nonresident trustee named in a testamentary trust, the Clerk of the Court should first appoint a resident as trustee under G. S. 45-9, which resident may, in turn, renounce in favor of the nonresident trustee originally named under G. S. 36-6.

POWELL BILL FUNDS; USE FOR PURCHASE OF RIGHT-OF-WAY FOR NEW STREET

7 August 1952

Powell Bill Funds may be used for the purchase of right-of-way for a new street which is not a part of the State Highway System.

WATER WORKS AND LIGHT SYSTEM; EXPENDITURE OF PROFITS FROM MUNICIPAL WATER AND LIGHT SYSTEM FOR MAINTAINING PUBLIC LIBRARY

7 August 1952

Net profits from the operation of a municipal water works and light system must first be used to pay the interest and principal of bonds issued for that system before the funds could be diverted to other municipal purposes, in accordance with G. S. 160-397.

CLERK OF SUPERIOR COURT; FEES ALLOWED IN ADDITION TO SALARY; RIGHT TO RETAIN FEES UNDER G. S. 105-22(c), 105-24, 105-93(d).

7 August 1952

Under the rule of statutory construction laid down in G. S. 12-1, it is thought that the Clerk of the Superior Court for McDowell County is entitled to the fees provided in G. S. 105-22(c), 105-24 and 105-93(d) in

addition to the salary fixed by Section 1, Chapter 431, Session Laws of 1949.

OPTOMETRY; MINOR REPAIRS TO SPECTACLES

7 August 1952

Any person may make minor repairs to spectacles without the necessity of securing a license to practice optometry or the necessity of securing a license as a dispensing optician.

COUNTY FISCAL CONTROL ACT; BUDGET AMENDMENTS;
SUPPLEMENTARY APPROPRIATIONS

8 August 1952

Where a county has surplus funds derived from amounts left over after expenditures from its health fund and from appropriations made over a period of six years, it may amend its appropriation resolution and budget so as to make available part of these surplus funds to pay the county's share of the cost of constructing a health center building where the majority of the funds for this purpose are furnished by the North Carolina Medical Care Commission.

REFORMATORIES; STATE BOARD OF CORRECTION AND TRAINING; EASTERN
CAROLINA INDUSTRIAL TRAINING SCHOOL FOR BOYS;
STATUTES; ADMISSION TO TRAINING SCHOOL

8 August 1952

While the State Board of Correction and Training must receive delinquent boys under eighteen years of age in Eastern Carolina Industrial Training School for Boys, nevertheless, they have discretionary authority to receive boys over eighteen years of age and under twenty years of age if, in their discretion, they desire to do so.

WILLS; DISSSENT BY INCOMPETENT WIDOWS; MUST BE REPRESENTED
BY GUARDIAN OF NEXT FRIEND

8 August 1952

If a widow be an infant or insane she may dissent from her husband's will by her guardian. G. S. 30-1. In the case of *HOLLOMON v. HOLLOMON*, 125 N. C. 29, the court holds that an infant widow may be represented in such a proceeding by a next friend appointed by the court in conformity with the provisions of G. S. 1-64.

MOTOR VEHICLES; DRIVERS' LICENSES; GOVERNMENT MAIL CARRIER'S
LEASED TRUCK; CHAUFFEURS' LICENSES

11 August 1952

A post office employee operating a truck leased by the Post Office Department is not required to have a North Carolina operator's license while driving the truck in performance of his duties. The lessor of the truck, who drives the truck to and from the post office, is not required to have a chauffeur's license.

MOTOR VEHICLES; RULES OF THE ROAD; SPEEDING IN TWO COUNTIES

11 August 1952

One who speeds through two counties in a continuing manner is only guilty of one crime of speeding. He may be tried in either county.

CRIMINAL LAW; EVIDENCE; COMPETENCY OF TESTIMONY OF WITNESS WHO
TESTIFIED ON FORMER TRIAL; NONRESIDENT WITNESS REFUSING
TO RETURN TO STATE

11 August 1952

Where a witness has testified in a former trial and the witness is a nonresident of this State, his evidence given at the former trial can be used in another trial which concerns the same parties and the same issues, the witness refusing to return to this State. The witness could be compelled to return to this State under the Uniform Out-of-State Witness Act.

ZONING ORDINANCES; LOCATION AND OPERATION OF V.F.W. CLUB IN AREA
ZONED FOR RESIDENTIAL PURPOSES

11 August 1952

A zoning ordinance is not effective as to existing buildings and businesses carried on prior to the effective date of the ordinance.

AD VALOREM TAXATION; AFFIXED MACHINERY AS PERSONAL PROPERTY;
VALIDITY OF STATUTE PERMITTING SUCH CLASSIFICATION

12 August 1952

A county may not treat machinery attached to buildings where both machinery and buildings are owned by the same person as personal property for ad valorem taxation. A special act to enable such treatment would probably be valid.

AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY; PATRIOTIC,
HISTORICAL OR CHARITABLE ASSOCIATIONS

13 August 1952

With respect to the exemption from ad valorem property taxation provided by G. S. 105-296 (6) for certain patriotic, benevolent and charitable organizations, land adjacent to the buildings which are exempt is also exempt to the extent that such additional adjacent land may be necessary for the convenient use of the buildings thereon.

LICENSE TAXES; MUNICIPAL CORPORATIONS

13 August 1952

There is no statutory authority for county officers or a township constable to collect city taxes.

A city is not under any statutory obligation to furnish any particular special services to businesses carried on in such town merely because the town imposes privilege license taxes.

(1) SCHOOLS; TRANSFER OF FUNDS

(2) COUNTY COMMISSIONERS; LEVY OF TAXES

14 August 1952

G. S. 153-122 provides that a supplemental budget may be adopted at any time before the levy of taxes is made. G. S. 153-124 provides that the tax levy shall be made not later than Wednesday after the third Monday in August of each year. G. S. 115-83 places upon the Board of Commissioners and not the Board of Education the duty to determine what expenditures shall be made for the erection, repair and equipment of school buildings in the county. *JOHNSON v. MARROW*, 228 N. C. 58; *ATKINS v. McADEN*, 229 N. C. 752. G. S. 153-127 provides that no appropriation except an appropriation for general county expenses shall be transferred from one fund to another.

From the foregoing it would seem doubtful that funds can be transferred from one school building project to another after taxes have already been levied and are in the process of being collected for specific school building projects. Certainly the Board of Education would not have authority to make such a transfer of funds without the concurrence of the Board of County Commissioners.

ESTATES; RIGHT OF SURVIVORSHIP IN CORPORATE STOCKS

14 August 1952

General Statutes 41-2 abolishes survivorship in estates of inheritance where survivorship arises by operation of law, but the statute does not prevent the creation of a valid contract of survivorship.

MUNICIPAL CORPORATIONS; NON-TAX REVENUE;
RECREATION FACILITIES AND LIBRARY

14 August 1952

Net revenues from the operation of a municipal power plant must first be used to pay the principal and interest on bonds issued for the power plant before the revenues can be diverted to other purposes.

TELEPHONE TAX; EXEMPTIONS; TUBERCULOUS ASSOCIATION

14 August 1952

Tuberculosis Associations are not exempted from payment of the Federal telephone tax.

EXECUTORS AND ADMINISTRATORS; BOND; PLEDGES

14 August 1952

It is fundamental that in a pledge of personal property title remains in pledgor while the right of possession passes to pledgee. In a case in which notes are pledged to secure the payment of indebtedness and pledgor dies before the debt is paid, title, subject to the lien created by the pledge, passes to the administrator. Therefore, the bond of the administrator should be sufficient to cover the notes in question.

DOUBLE OFFICE HOLDING; STATE PROBATION OFFICER AND TOWN ALDERMAN

14 August 1952

A State Probation Officer and a Town Alderman are both public officers within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not serve in both these capacities at the same time.

CLAIM AND DELIVERY; DUTY OF THE SHERIFF OR OTHER OFFICER TO HOLD
SEIZED PROPERTY FOR THREE DAYS

14 August 1952

Where a sheriff or his deputy has seized property in claim and delivery proceedings, he is required by statute to hold the same for three days. See G. S. 1-477 and G. S. 1-478.

COUNTIES; BOARDS OF COUNTY COMMISSIONERS; COUNTY BOARD OF EDUCATION; PROPER DISTRIBUTION OF FEDERAL FOREST FUNDS PAID TO COUNTIES

14 August 1952

The National Forest Funds paid to the County of Graham should be placed to the credit of the county school fund in accordance with the

Federal statute since the General Assembly for the State has not passed any statute directing a distribution in Graham County different from the object of distribution expressed in the Federal statute.

CLERK OF SUPERIOR COURT; PROCEEDING FOR CUSTODY OF CHILDREN
UNDER G. S. 50-13; SPECIAL PROCEEDING

15 August 1952

The proceeding brought under the second paragraph of G. S. 50-13 is a special proceeding heard before the Judge of the Superior Court, and the summons and other procedural requirements of special proceedings should be used.

MUNICIPAL CORPORATIONS; NON-TAX REVENUE; RECREATION
FACILITIES AND SWIMMING POOL

18 August 1952

A town may not use tax funds for the erection of a swimming pool without an approving vote of the people. A town may use funds derived from the operation of an electric light system for this purpose providing there are no outstanding bonds issued for the electric light system.

CRIMINAL LAW; SPRING OR TRAP GUNS

18 August 1952

Anyone using spring or trap guns on his property to protect his crops from wild animals would be subject to indictment for manslaughter should any person be killed by accidentally setting off such a gun.

JUSTICES OF THE PEACE; JURISDICTION; SPEEDING WITHIN CITY LIMITS

19 August 1952

If a municipal Recorder's Court has been given by statute exclusive jurisdiction over offenses committed within the city limits, which offenses would otherwise be within the jurisdiction of the Justice of the Peace, a Justice of the Peace may not try charges of violation of speed limits fixed by a municipal ordinance. Otherwise, he may do so if the maximum penalty does not exceed a fine of \$50.00 or imprisonment for thirty days.

ZONING ORDINANCE; MUNICIPAL CORPORATIONS; LEGALITY AND CONSTITUTIONALITY OF ORDINANCES MAKING IT UNLAWFUL FOR A PERSON, FIRM OR CORPORATION TO VIOLATE SAID ORDINANCES ON PENALTY OF FINE OR IMPRISONMENT; METHODS OF ENFORCEMENT

19 August 1952

A zoning ordinance of a municipality which is not adopted in accordance with the method of procedure set out in G. S. 160-175 is invalid and not effective as a zoning regulation.

Municipalities have no authority to create criminal offenses and the violation of a city ordinance is not a criminal offense by virtue of any declaration contained in the ordinance but only by reason of G. S. 14-4 which makes the violation of municipal ordinances a misdemeanor punishable by fine or imprisonment.

(1) INHERITANCE TAX; JOINT BANK ACCOUNT

(2) DISTRIBUTION; WIDOW'S RIGHTS

20 August 1952

1. If the contract creating a bank account in the names of two persons provides for survivorship, the balance in the account at the time of the death of one of the persons passes to the other by virtue of the contract. It does not constitute part of the estate of the deceased, regardless of which person made the deposits.

2. For inheritance tax purposes the portion of a joint bank account representing deposits made by the deceased is part of the taxable inheritance of the other joint depositor.

3. Where a man dies leaving a child and a widow, even though the child be a child of a former marriage, the 1951 amendment to G. S. 28-149 giving the widow the first ten thousand dollars (\$10,000.00) of the distributable personal property does not apply.

MOTOR VEHICLES; RULES OF THE ROAD; PUNISHMENT FOR SPEEDING

20 August 1952

The crime of speeding is punishable by a fine not exceeding \$100.00 or by imprisonment not exceeding sixty days or both.

(1) LICENSE TAX; INDUSTRIAL PLANT CAFETERIA

(2) JUNK DEALERS; INDUSTRIAL PLANT SELLING OWN SCRAP

(3) SALES TAX; INDUSTRIAL PLANT SELLING SAFETY EQUIPMENT
TO WORKERS

21 August 1952

(1) The license tax imposed upon cafeterias does not apply to a non-profit cafeteria operated by an industrial plant for the sole benefit of its employees. The fact that occasional visitors to the plant are also served is immaterial. The cafeteria must be operated by the plant and not by any other person under a lease or concession.

(2) An industrial plant which merely collects its own scrap and waste materials and sells them to a junk dealer is not required to obtain a junk dealer's license.

(3) An industrial plant maintaining a store at which it sells safety shoes and like articles at cost to its employees must pay the sales tax on such sales.

POLL TAX; PAYMENT AS A PREREQUISITE TO THE RIGHT TO VOTE

22 August 1952

The payment of poll tax to a municipality is not a prerequisite to the right to vote in such municipality.

MARRIAGE LAWS; AUTHORITY TO PERFORM MARRIAGE CEREMONIES

25 August 1952

A marriage ceremony may be performed in the presence of an ordained minister of any religious denomination, minister authorized by his church, or of a justice of the peace.

OSTEOPATHY; ADMINISTRATION OF ANESTHETICS; PRACTICE OF MEDICINE

26 August 1952

An osteopathic physician is not authorized to use drugs in his practice and, therefore, cannot use anesthetics for the reduction of fractures.

ESTATES BY THE ENTIRETY; DEFICIENCY JUDGMENTS

26 August 1952

The statutes abolishing deficiency judgments and purchase money mortgages and allowing mortgagors to show the value of property sold as an offset against the claim to establish a deficiency judgment do not overrule the case of *TRUST COMPANY v. BLACK*, 198 N. C. 219.

PEACE WARRANT; CRIMINAL ACTION; PAYMENT OF COSTS

26 August 1952

Under G. S. 1-5, a peace warrant proceeding is a criminal action, and the defendant can be taxed with the costs.

ELECTIONS; CANDIDATE; CHANGE OF PARTY AFFILIATION

26 August 1952

Where a candidate is affiliated with one political party and desires to be a candidate of another political party, he must change his party affiliation by the method provided by statute, and such change of affiliation must exist before he files notice of candidacy with the other party.

INCOME TAXES; DEDUCTIONS; DEPLETION

27 August 1952

A reasonable allowance for depletion may be deducted from gross income. The basis for deduction is cost plus additions and improvements, and the method is this from that employed for Federal income tax purposes.

PHYSICAL THERAPISTS; EMPLOYEES OF VETERANS ADMINISTRATION

27 August 1952

So long as an employee of the Veterans Administration does not represent himself as being a registered physical therapist, or so long as he does not use with his name any of the words or letters set forth in Section 9 of Chapter 1131 of the Session Laws of 1951, such person would not be required to register with the State Examining Committee of Physical Therapists.

LICENSE TAXES; DRINK DISPENSERS; SECTIONS 130½ AND 144
OF THE REVENUE ACT

28 August 1952

A town may levy a license tax of \$2.50 on a drink dispenser.

WILLS; INFANTS; DISABILITY; DOMICILE OF BENEFICIARY;
WHAT LAW CONTROLS

28 August 1952

The capacity of a beneficiary to take a bequest of personalty depends upon the law of the domicile of the beneficiary.

INSANE PERSONS DISCHARGED FROM HOSPITAL; RESTORATION OF SANITY

29 August 1952

The certificate of the Superintendent of the State Hospital that a person committed to the hospital is discharged and her commitment terminated, and that such termination will not be injurious to the patient or dangerous to the community, is not sufficient to restore such person to her full legal rights as a sane person.

BAD CHECKS; CHECKS RETURNED ON ACCOUNT OF INSUFFICIENT FUNDS;

2 September 1952

When any uncertified check is tendered in payment of any obligation to the Department of Revenue, and such check shall have been returned to the

office of the Commissioner of Revenue unpaid on account of insufficient funds of the drawer of said check in the bank upon which same is drawn, then an additional tax shall be imposed equal to ten per cent (10%) of the tax due; and in no case shall the increase of said tax because of such failure be less than one dollar nor exceeding two hundred dollars, and the said additional tax cannot be waived or diminished by the Commissioner of Revenue. This section shall apply to all taxes levied or assessed by the State.

INTOXICATING BEVERAGES; LABOR LAW PERMITTING MINOR TO WORK IN
PLACE WHERE INTOXICATING BEVERAGES ARE SOLD

2 September 1952

G. S. 110-7 prohibits the employment of a minor under eighteen years of age in any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold, or dispensed; subject to the proviso that such minor may be employed in an establishment where beer is sold and not consumed on the premises and to which has been issued only an "off premises" license for the sale of beer.

AUTHORITY OF COUNTY AND CITY TO PROHIBIT SALE OF BEER ON SUNDAYS

2 September 1952

G. S. 18-107 gives to counties and municipalities the authority to prohibit the sale of beer and/or wine from 11:30 P.M., on each Saturday until 7:00 A.M. on the following Monday. The second paragraph of the statute provides that such power shall be exclusive with the governing bodies of municipalities within the corporate limits of such municipalities and the power vested in county commissioners shall be exclusive in all portions of such counties not embraced within the corporate limits of municipalities therein.

Under the foregoing statute, it would seem that since the Commissioners of Martin County have by regulation made it unlawful to sell beer within the county on Sunday, and the Town of Williamston in said County has passed no ordinance on the subject, the regulation of County Commissioners is not effectual within the limits of the Town of Williamston.

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT; LEGAL ASSISTANCE
IN INITIATING ACTIONS UNDER

2 September 1952

Persons who wish to initiate proceedings in this State as the initiating State under the Uniform Reciprocal Enforcement of Support Act must provide their own legal assistance. The statute provides for the solicitor to look after the obligee when this State is the responding State, but no

such provision exists as to the initiating State. Persons without funds to retain legal assistance can initiate such proceedings in forma pauperis and have counsel assigned.

CORPORATIONS ORGANIZED UNDER FEDERAL LAW; REQUIREMENTS
FOR DOMESTICATION

2 September 1952

A corporation organized under Federal law is not required to domesticate in this State.

MARRIAGE LAWS; MARRIAGE BY TELEPHONE

2 September 1952

A marriage ceremony performed over the telephone is not considered a legal marriage under the laws of this State.

PUBLIC RECORDS; MUNICIPAL TAXATION;
AUTHORITY TO DESTROY OLD RECORDS

3 September 1952

A county may destroy old tax records with the permission of the Director of the Department of Archives and History.

SCHOOLS; ATTENDANCE OUTSIDE DISTRICT OF RESIDENCE

3 September 1952

G. S. 115-352 provides that school children shall attend school within the district in which they reside unless assigned elsewhere by the State Board of Education. G. S. 115-214 provides that the county board of education may arrange with a special tax district to send children residing in other districts to the schools of such district when such children are without adequate educational advantages.

G. S. 115-213(d) provides that a child may attend the schools of another district when such child has been received into the home of the person residing in the district as a member of the family of such person and when such child receives board and other support free of cost.

SCHOOL LAW; APPOINTMENT OF LOCAL SCHOOL COMMITTEE;
INCREASE IN MEMBERSHIP

3 September 1952

G. S. 115-354 provides that at the first regular meeting during the month of April in the year of their appointment and biennially thereafter, the

county boards of education shall appoint school committeemen for each of the several districts of their counties consisting of not less than three nor more than five persons for each school district, and for a term of two years. It would seem that after a school committee consisting of three members has been set up, the membership may not be increased from three to five until the end of the biennium for which the members have been appointed.

LICENSE TAXES; MUNICIPAL TAXATION OF DELIVERY TRUCKS; PEDDLERS

3 September 1952

A municipal privilege tax on a business which incidentally uses trucks does not necessarily violate G. S. 20-97 limiting the amount of taxation placed on motor vehicles or their use.

LICENSE TAXES; CONTRACTORS; ROOFING CONTRACTORS; SECTION 122

4 September 1952

A contractor who bids on reroofing warehouses is subject to the contractor's license taxes levied in G. S. 105-54.

AD VALOREM TAXATION; JURISDICTION TO TAX IMPORTED NEWSPRINT

4 September 1952

Newsprint is exempt from county ad valorem taxation when it is imported from a foreign country, it is still in the hands of the importer, and is still in the original package.

DRIVERS' LICENSES; REVOCATION; SUSPENDED SENTENCE ON CONDITION OF
NON-OPERATION OF MOTOR VEHICLE

4 September 1952

While a Court may not suspend an operator's license, it may impose reasonable conditions for suspension of sentence and probation.

CLERK OF SUPERIOR COURT; VENUE; AUTHORITY TO ENTERTAIN
ORDER OF REMOVAL

4 September 1952

The clerk of the Superior Court has authority to entertain a motion for change of venue where the request is made as a matter of right, and not discretion.

PHYSICAL THERAPISTS; EXEMPTION OF FEDERAL EMPLOYEES
FROM REGISTRATION

5 September 1952

Federal employees who practice physical therapy exclusively within Federal organizations which employ them are not required to register as physical therapists under the law regulating this profession. Should such employees hold themselves out to the public as practicing physical therapy, they would be required to register under this law.

ELECTIONS; ABSENTEE SERVICEMEN'S BALLOT; DESIGNATION OF PRECINCT;
RIGHT TO VOTE WHERE NO PRECINCT IS DESIGNATED

5 September 1952

The absent servicemen's ballots should be voted although no precinct is designated on the envelope containing the same if his proper precinct can be ascertained by the County Board of Elections or the Chairman thereof.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT; REVOCATION
PRIOR TO ENACTMENT

5 September 1952

One whose license was revoked for drunken driving prior to the enactment of the Financial Responsibility Act may be required to satisfy the requirements of that Act prior to obtaining reissuance of his license.

LICENSE TAXES; LAUNDRIES; "LAUNDERETTE" TO BE TREATED
AS LAUNDRY; SECTION 150

5 September 1952

Even though a launderette is the only laundry being operated in a particular town, the existence of such launderette makes an out-of-town laundry, which solicits business in the town where the launderette is located, subject to the additional license tax imposed by Section 150 of the Revenue Act.

GROUP LIFE INSURANCE; HEALTH AND ACCIDENT INSURANCE; ELIGIBILITY OF
EMPLOYEES OF COUNTIES TO PURCHASE GROUP LIFE,
HEALTH AND ACCIDENT INSURANCE

5 September 1952

Employees of counties and municipal corporations may purchase group life insurance only where the plan provides for the entire premium to be paid by such employees.

Under the provisions of G. S. 58-254.4, county employees may purchase health and accident insurance in those cases where the plan provides that the employees pay all of the amount of the premium.

1. AD VALOREM TAXATION; COMMISSIONS ON COLLECTIONS; PAYMENT INTO GENERAL FUND WHEN TAX COLLECTOR IS ON SALARY
2. SCHOOLS; CURRENT EXPENSE BUDGET; PAYMENT TO ADMINISTRATIVE UNITS MONTHLY

5 September 1952

G. S. 105-424 sets out the compensation of a tax collector when he serves on a fee or commission basis. Most of the acts creating the separate office of tax collector and relieving the sheriff of such duties specifically provide that the salary of the tax collector shall be paid from the general fund of the county and that all fees and commissions, which he would otherwise receive, shall be paid into the general fund. The Caldwell County Act contains no such provision. Still it is thought that the correct procedure to be followed is to charge each fund with a fee for tax collection expense equal to the old fee allowed to the sheriff or tax collector as compensation for collecting taxes.

County Commissioners should never deliberately levy taxes in excess of the budget requirements for school purposes. However, if it should occur that the fines and forfeitures collected exceed the budget estimate, there is simply a surplus to be dealt with as are other surplus funds.

G. S. 153-124 provides that in making the tax levy, boards of county commissioners shall take into consideration unencumbered balances carried over from the preceding fiscal year and the estimated miscellaneous revenues from sources other than taxation. G. S. 153-127 provides that no appropriation except an appropriation for general county expenses shall be transferred from one fund to another and that no appropriation for general county expenses shall be transferred except upon the passage and recording of a resolution of the Board of County Commissioners ordering such transfer.

G. S. 115-363 provides that all county-wide current expense school funds shall be apportioned to county and city administrative units monthly until the full amount of the budget has been paid. If there are additional collections after that, these additional funds will simply remain with the county treasurer and to the credit of the various administrative units on a per capita enrollment basis and this surplus will be taken into consideration in making the budget for the next fiscal year.

SALES TAX; MOTOR VEHICLES

8 September 1952

When a motor vehicle is transferred by one corporation to another, both corporations being controlled by the same stockholder, the transfer of title is governed by the same laws applicable to any other transfer of motor

vehicle, and the use tax imposed by G. S. 105-168 (c) and measured by 3% of the purchase price applies. If no consideration was paid, directly or indirectly, for the transfer no use tax will be due.

MUNICIPAL CORPORATIONS; REVENUE BONDS; PURCHASE OF GAS PLANT

8 September 1952

Municipalities may issue revenue bonds for the purchase of a gas plant without a vote of the people as revenue bonds are not subject to the debt limitation provision of the State Constitution.

MARRIAGE LAW; FIRST COUSINS MAY MARRY

8 September 1952

First cousins may lawfully marry in North Carolina.

MARRIAGE LAWS; WHERE MARRIAGE CEREMONY IS TO BE PERFORMED

8 September 1952

Under G. S. 51-6, it is provided that no minister or officer shall perform a ceremony of marriage between any two persons, or shall declare them to be man and wife, until there is delivered to him a license for the marriage of the said persons, signed by the register of deeds of the county in which the marriage is intended to take place.

Failure to have the ceremony performed in the county where the license is issued would not invalidate the marriage.

WILLS; EXECUTION; WITNESSES

8 September 1952

Two witnesses are required to the proper execution of a will. It is not necessary that the signature of these witnesses be notarized.

SCHOOLS; CONDEMNATION OF CHURCH PROPERTY BY BOARD OF EDUCATION

8 September 1952

A board of education may condemn property for school purposes which is owned by a church.

PUBLIC LIBRARIES; MUNICIPAL CORPORATIONS; RIGHT TO ISSUE BONDS FOR THE ERECTION OF LIBRARIES; SPECIAL TAX FOR SUPPORT AND MAINTENANCE OF LIBRARIES

8 September 1952

A municipality may not issue bonds for the erection of a public library building. A municipality which approves a tax levy by a vote of the people

is limited to the amount of the tax levy prescribed in G. S. 160-65 of not less than three cents (3c) nor more than ten cents (10c) on the one hundred dollars (\$100.00) valuation of property.

COUNTIES; LIMITATION UPON INCREASING PUBLIC DEBT IMPOSED BY
ARTICLE V, SECTION 4, OF THE NORTH CAROLINA CONSTITUTION

8 September 1952

A loan from the State Literary Fund made by the State Board of Education would increase the indebtedness of the county within the contemplation of Article V, Section 4. Therefore, a referendum vote of the people of the county is required in order to authorize such loan in excess of two-thirds of the amount by which the outstanding indebtedness of the county was reduced during the next preceding fiscal year. HALLYBURTON v. BOARD OF EDUCATION, 213 N. C. 9.

ELECTRIC MEMBERSHIP CORPORATION; MANUFACTURER'S EXCISE TAX;
EXEMPTION OF POLITICAL SUBDIVISION

9 September 1952

The Edgecombe-Martin County Electric Membership Corporation is a political subdivision of the State of North Carolina for the purposes of the exemption from the manufacturer's excise tax.

SCHOOLS; BUS TRANSPORTATION; FINAL AUTHORITY TO ESTABLISH
BUS ROUTES

9 September 1952

Under G. S. 115-376 it would seem that final authority to establish the route to be followed by each school bus operated as a part of the State Public School Transportation System is in the State Board of Education. This section provides that the bus routes shall be established by the State Board of Education in cooperation with the County Superintendent of schools, District School Committee and the District School Principal. The local committee may appeal to the County Board of Education and the County Board of Education may appeal to the State Board of Education. G. S. 115-376.

MUNICIPALITIES; TORT LIABILITY FOR INJURY TO THIRD PERSON
BY FIRE DEPARTMENT

9 September 1952

A municipal corporation is not liable to a third person for the negligence of its employees when such employees are engaged in the performance of a governmental as opposed to a proprietary function. The operation of a

fire department is a governmental function. Chapter 1015, Session Laws of 1951, provides that a municipality may waive the foregoing liability by carrying liability insurance. However, this waiver is only to the extent of the amount of insurance carried.

ADOPTION; APPLICATION OF G. S. 48-13 TO ALLEGATIONS IN ANCILLARY
PROCEEDING TO DETERMINE ABANDONMENT OF CHILD

9 September 1952

G. S. 48-13, prohibiting reference to parental status in certain documents in adoption proceedings, does not apply to pleadings and documents filed wherein an issue of abandonment of the child on the part of the parents, or one of the parents, is raised.

OLD AGE ASSISTANCE; LIEN UNDER G. S. 108-30.1; RELEASE OF LIEN AND
SUBSTITUTION OF OTHER SECURITY

9 September 1952

Where a lien is attached to property of an old age assistance recipient under G. S. 108-30.1, the county can release this lien and accept new property, and a new lien for the amounts due for such assistance.

ELECTIONS; RESIDENCE OF MARRIED WOMAN; REGISTRATION;
ABSENTEE REGISTRATION

9 September 1952

The voting residence of a wife usually follows that of the husband except in cases of separation and living apart from each other. Members of the armed forces are entitled to register by the absentee method provided by the statute. This does not apply, however, to members of their family who are not in the armed forces.

SCHOOLS; ATTENDANCE OUTSIDE DISTRICT OF RESIDENCE; REMOVAL FROM
ONE DISTRICT TO ANOTHER FOR PURPOSE OF ATTENDANCE OF SCHOOLS

10 September 1952

G. S. 115-352 provides that school children shall attend school within the district within which they reside unless assigned elsewhere by the State Board of Education. G. S. 115-213 stipulates what persons residing in local tax or special school tax districts shall be entitled to the privileges and advantages of the public schools of such districts. Subsection (b) thereof includes all children whose parents have recently moved into the district for the purpose of making their legal residence in the same. G. S. 115-214 provides that any parent residing outside of any school tax district and owning property within such district, whose children shall attend school

in said district, shall be entitled to receive as a credit on the tuition of such children the amount of special school taxes paid on said property. This section further provides that a county board of education may arrange with any district to send any children residing in the county to the schools in such district if such children are without adequate educational advantages.

If families move into a district in good faith and intend to make that community their permanent home, their children are entitled to attend the schools of the district.

ALCOHOLIC BEVERAGE CONTROL ACT; EXPENDITURE OF FUNDS FOR LAW
ENFORCEMENT; EXPENDITURE FOR TEACHING THE EVIL
EFFECTS OF THE USE OF ALCOHOL

10 September 1952

County ABC Boards have no statutory authority under the general law to spend that part of the profits devoted to law enforcement for teaching the evil effects of the use of alcohol, but the use of a limited amount of such funds for such purpose may be free from criticism.

ROADS AND HIGHWAYS; STATE HIGHWAY AND PUBLIC WORKS COMMISSION;
AUTHORITY TO MAKE RULES AND REGULATIONS
FOR THE USE OF THE HIGHWAYS

10 September 1952

The State Highway and Public Works Commission has authority to make rules, regulations and ordinances for the use of, and to police traffic on, the State highways of this State. A violation of such an ordinance is a misdemeanor.

GAME LAWS; LICENSE REQUIREMENTS

10 September 1952

A hunting license is required for any person to take any wild game, wild animals or birds at any time without first having procured a license. See G. S. 113-95. The taking of birds or animals is defined by G. S. 113-83. It means the pursuit, hunting, capture or killing of birds or animals at any time by any means specifically permitted. These sections apply to protected or unprotected birds or animals, whether defined as game birds or animals or otherwise. The fact that a person hunting wild animals did not use a gun or other weapon in doing so would not have the effect of exempting him from the requirement that a hunting license be purchased.

ELECTIONS; CHANGING PRECINCT BOUNDARIES

10 September 1952

Under G. S. 163-22 and G. S. 163-23 it would seem that a county board of elections has authority to change the boundary of two election precincts

so as to transfer a small block of voters from one precinct to adjoining one and without calling for a new registration of all voters in these two precincts.

MOTOR VEHICLES; JURISDICTION OF JUSTICE OF THE PEACE
OVER DRIVING OFFENSES

11 September 1952

A Justice of the Peace has jurisdiction over the offenses of passing on curves and hillcrests, parking on the highway, and driving on the wrong side of the road. He does not have jurisdiction over the offenses of driving without an operator's license, driving after the operator's license has expired, a licensed operator allowing an unlicensed operator to drive, allowing a minor to drive, overloading trucks, or an out-of-state operator driving without a license.

SCHOOLS; ENLARGING BOUNDARY LINES OF BOND DISTRICT

15 September 1952

It would seem that the provisions of G. S. 115-192 and G. S. 115-361 apply only to the enlargement of administrative school districts and not to the special bond taxing units created under such statutes as Chapter 382, Session Laws of 1947. In fact it would seem that there is no statutory provision for enlarging such a district, but there seems no reason why the Legislature cannot amend such statutes to provide machinery for the enlargement of such districts.

LICENSE TAX; MUNICIPALITY; ICE

15 September 1952

A municipality may not impose a license tax upon a peddler of ice. It may impose a license tax upon one who sells ice at a fixed place of business in the city whether or not he buys the ice in another town and brings it to the taxing town for resale.

MOTOR VEHICLES; DRIVER'S LICENSE; PERMITTING UNLICENSED
PERSON TO DRIVE

15 September 1952

1. When a man is sitting under the steering wheel and is in control of the operation of a motor vehicle except that he permits a child to hold the steering wheel, the child is not driving the vehicle. The man may be guilty of reckless driving depending upon the circumstances of the case. He is not guilty of permitting an unauthorized person to drive a motor vehicle.

2. A 14-year-old boy who drives a truck upon the highway is guilty of violating G. S. 20-7 since he has no driver's license. The Juvenile Court has exclusive jurisdiction over the offense.

3. When a 14-year-old boy drives his father's truck upon the highway the father is guilty of violating G. S. 20-34 in permitting the vehicle to be driven by a person who has no legal right to do so if, but only if, the father authorized the son to drive the vehicle. Such authorization may be found in past permissions even though the father did not know of the particular trip.

ELECTIONS; FILLING VACANCY IN NOMINATION FOR COUNTY REPRESENTATIVE;
MAJORITY OF COUNTY EXECUTIVE COMMITTEE REQUIRED

15 September 1952

A County Executive Committee of a political party is authorized by statute to fill a vacancy in candidacy for member of House of Representatives and may act although three members of the Executive Committee have not been named as required by that party's plan of organization.

ELECTIONS; WRITE-IN VOTES

15 September 1952

On a township ballot where the names of two candidates appear, one from each party, space should be left below each name for a write-in if a voter desires to vote for some other person.

BANK INVESTMENTS; AUTHORITY TO INVEST IN HOUSING AUTHORITY
TEMPORARY LOAN NOTES

16 September 1952

North Carolina banks may invest in temporary loan notes of North Carolina Local Housing Authorities subject to the limitations of G. S. 35-46.

WILLS; NOTARIZATION OF SIGNATURES OF WITNESSES

16 September 1952

The fact that the signatures of witnesses to a will are notarized would not invalidate the will.

SCHOOLS; DISTRICT OR SCHOOL IN WHICH CHILD REQUIRED TO ATTEND

17 September 1952

G. S. 115-352 provides that school children shall attend school within the district in which they reside unless assigned elsewhere by the State Board of Education. G. S. 115-55 and 115-56 clearly imply that where there are two or more schools in the same district, the County Board of

Education assigns children to a particular school within the district. G. S. 115-376 provides that the State shall not be required to furnish transportation for children living within one and one-half miles of the school in which provision for their instruction has been made and that children shall not be transported except to the school to which assigned by the County Board of Education or the State Board of Education.

SCHOOL LAW; AGE FOR ADMISSION; CHILD BORN ON OCTOBER 2ND

17 September 1952

Since the courts do not count parts of days, it is thought that under G. S. 115-371, a child born on October 2nd, 1946 is entitled to enter school at the Fall term 1952 provided he enrolls during the first month of the school term.

MUNICIPAL CORPORATIONS; AUTHORITY TO FIX RATES TO BE CHARGED
BY TAXICAB OPERATORS

17 September 1952

The governing body of a municipality is authorized to establish rates which may be charged by taxicab operators, and such operators should first secure the authority of the governing board of a municipality before such rates are increased.

LICENSE TAXES; MUNICIPAL TAXES; REFUND; TRANSFER

17 September 1952

1. When the owner of a business procures a municipal license for it and then sells the business before the end of the tax year, he is not entitled to a refund of any part of the tax.

2. A municipal license is transferable to the transferee of the business if the power of the city to impose the license is regulated by the State Revenue Act. A municipal license for the sale of beer is not transferable. Since the State Revenue Act contains no provision with reference to a municipal license tax upon the sale of sandwiches, the transferability of such license is governed by the city ordinance adopted pursuant to G. S. 160-56.

MUNICIPAL FINANCES; AUTHORITY TO USE REVENUES FROM LIGHT SYSTEMS

17 September 1952

After a city has used the revenues derived from its light system to pay the expenses of the system and to pay the interest and principal due on the bonds of that system for the next succeeding year, it can devote the surplus remaining for the erection of a municipal swimming pool.

AD VALOREM TAXES; MUNICIPAL TAXES; TAXICAB

18 September 1952

If a man resides outside the limits of a city and regularly keeps his taxicab at his residence when it is not in use, the city may not impose property tax on the vehicle even though it is operated within the city.

MARRIAGE LAWS

18 September 1952

Under G. S. 51-6, no minister or officer shall perform a ceremony of marriage between any two persons, or shall declare them to be man and wife, until there is delivered to him a license for the marriage of said persons, signed by the register of deeds of the county in which the marriage is intended to take place, or by his lawful deputy.

The action on the part of a minister in marrying persons in a county other than that in which the license was issued would not invalidate the marriage.

MUNICIPAL CORPORATIONS; STREET ASSESSMENTS; LIABILITY OF HOSPITAL
AUTHORITY FOR THE PAYMENT OF STREET ASSESSMENTS

18 September 1952

Hospital authorities are liable for the payment of street assessments levied by municipal corporations.

ELECTION LAW; ELIGIBILITY OF PATIENTS AND STAFF MEMBERS AT
VETERANS HOSPITALS TO REGISTER AND VOTE

18 September 1952

Patients, nurses and doctors who live in a Government Hospital in North Carolina and are not domiciled in this State are not eligible to register and vote in North Carolina. Patients, doctors and nurses domiciled in North Carolina and living temporarily in a Government Hospital have not lost their right to register and vote in their home precincts in North Carolina.

While there is no statute expressly authorizing it, there would seem to be no objection to a registrar's going into a Government Hospital to register eligible persons, provided the registrar has the permission of the hospital authorities to enter the premises for such a purpose.

REGISTER OF DEEDS; PROBATE-CROSS-INDEX OF INSTRUMENT

18 September 1952

G. S. 161-22.1 provides that whenever any deed or other instrument conveying real property by a trustee, mortgagee, commissioner or other officer

appointed by the court or by the sheriff under execution is filed for registration, it shall be the duty of the Register of Deeds to cross-index as grantors the names of all persons recited in said instrument to be the persons whose interest in such real estate is being conveyed. It would seem that the foregoing statute is applicable to a conveyance by the Sheriff in a tax foreclosure proceeding, even though the Sheriff may not be conveying either as a commissioner of the court or under an execution, in the strict sense of that term.

INCOME TAXES; RETIREMENT TRUST; TAXABILITY OF PAYMENT TO EMPLOYEES ESTATE

19 September 1952

An employee dies possessing a chose against a profit-sharing plan, which qualifies under Section 314 (10). The amount received by his estate in settlement of this claim does not constitute taxable income to the estate.

SEARCH WARRANT; SEARCH AFTER IMPROPER ARREST; COMPETENCE OF EVIDENCE

19 September 1952

Persons can be searched legally upon a proper search warrant or as an incident to a lawful arrest. Where neither of these situations exist, evidence discovered cannot be introduced against such persons in court.

OLD AGE ASSISTANCE; LIEN; LIMITATIONS AND TIME FOR BRINGING SUIT TO ENFORCE LIEN

19 September 1952

Since an action to enforce a lien under the Old Age Assistance law must be brought within ten years after the time of the last payment or within one year after the death of the recipient, such action should be brought within the one-year period after the death of the recipient even though the claim had been filed with the administrator and no action had been taken on the claim by way of approval or disapproval.

SCHOOLS; AUTHORITY TO LEASE SCHOOL PROPERTY; AUTHORITY TO PERMIT THE USE OF SCHOOL PROPERTY FOR OTHER THAN SCHOOL PURPOSES

19 September 1952

G. S. 115-95 provides that it shall be the duty of the county boards of education to encourage the use of public school buildings for civic or community meetings of all kinds that may be beneficial to the members of the local community.

G. S. 115-86 provides that when in the opinion of a County Board of Education any schoolhouse, schoolhouse site or other school property has become unnecessary for public school purposes, the Board may sell the

property at public auction by complying with the provisions of the statute. In the case of *BOWLES v. FAYETTEVILLE GRADED SCHOOLS*, 211 N. C. 36, the Supreme Court clearly indicated that surplus school property can be sold only at public auction and after full compliance with the provisions of G. S. 115-86. On some occasions in the past, the Legislature has authorized a particular conveyance without a public sale.

It is doubtful that a county board of education has authority to lease school property not presently needed for school purposes. However, it would seem that a board of education may for a limited time allow permissive use of such property by civic groups and for various public purposes such as recreation. In such cases it would seem that persons using the property should bind themselves to keep the building adequately insured and in a reasonable state of repair.

MUNICIPAL CORPORATIONS; DUTY TO FURNISH WATER AND SEWER FACILITIES

19 September 1952

A municipality may not be required to furnish water and sewer facilities to every resident of the town until such time as the town is financially able to do so. Failure of a municipality to furnish water and sewer facilities to a resident of the town would not release such resident from his duty to pay town taxes. See *BANKS v. RALEIGH*, 220 N. C. 36.

ELECTION LAWS; PROHIBITION PARTY

19 September 1952

In the General Election in November, there will be printed only Republican and Democratic ballots. No Prohibition Party ballots will be printed.

ABC FUNDS; EXPENDITURE FOR LAW ENFORCEMENT; INSTALLATION OF POLICE RADIO SYSTEM TO BE OPERATED BY WAKE COUNTY SHERIFF'S DE- PARTMENT IN COOPERATION AND COORDINATION WITH ABC OFFICERS

19 September 1952

The installation and operation of a police radio system to be operated out of the County Sheriff's department in cooperation and coordination with the County ABC officers can be properly effectuated out of ABC funds, provided for law enforcement, as long as the expenditure of such funds for this purpose does not exceed the statutory limit.

MOTOR VEHICLES; MUFFLERS

19 September 1952

Whether a particular muffler on a motor vehicle is such as to prevent excessive or unusual noise, annoying smoke and smoke screens, is a question of fact for the trial court.

MARRIAGE LAWS; DELAYED MARRIAGE CERTIFICATES

22 September 1952

Under the provisions of G. S. 51-21, 1951 Supplement to the General Statutes, in all those cases where a minister or other person authorized by law to perform marriage ceremonies has failed to file his return thereof in the office of the register of deeds who issued the license for such marriage, the register of deeds of such county is authorized to issue a delayed marriage certificate upon being furnished with one or more of the following:

- (1) The affidavit of at least two witnesses to the marriage ceremony;
- (2) The affidavit of one or both parties to the marriage, accompanied by the affidavit of at least one witness to the marriage ceremony;
- (3) The affidavit of the minister or other person authorized by law who performed the marriage ceremony, accompanied by the affidavit of one or more witnesses to the ceremony or one of the parties thereto.

The certificate issued by the register of deeds under authority of this section shall contain the date of the delayed filing, the date the marriage ceremony was actually performed, and all such certificates issued pursuant to this section shall have the same evidentiary value as any other marriage certificates issued pursuant to law.

The register of deeds shall issue the certificates provided for in this section upon the payment of a fee of one dollar and fifty cents (\$1.50) for each such certificate.

MUNICIPAL CORPORATIONS; STREET ASSESSMENTS; LIABILITY OF HOSPITAL AUTHORITY FOR THE PAYMENT OF STREET ASSESSMENTS

22 September 1952

The question as to whether or not street assessments levied against a hospital authority could be paid out of bond funds would depend upon the language of the ordinance authorizing the issuance of the bonds. I think it is clear that such assessments may be paid out of other hospital funds which the authority may have on hand.

MUNICIPAL CORPORATIONS; AUTHORITY TO CLOSE STREETS

22 September 1952

Under G. S. 160-200(11), specific authority is given to municipalities to close any street or alley that is now or may hereafter be open.

AD VALOREM TAXES; TAX SALE; RIGHT TO CONFIRM PRIOR TO
CONFIRMATION BY CLERK

22 September 1952

After a tax foreclosure sale has been had pursuant to provisions of G. S. 105-391, a taxpayer is still entitled to have the proceedings term-

inated prior to confirmation of the sale by the Clerk of the Superior Court if he pays the taxes, together with interest and penalties thereon and the costs of the foreclosure and sale proceeding.

MOTOR VEHICLES; RESTORATION OF DRIVER'S LICENSE;
SUSPENDED SENTENCE

22 September 1952

Only the Department of Motor Vehicles can impose a suspension or revocation of a driver's license. At the end of the period of revocation or suspension the person is entitled to a restoration of his license provided he meets the conditions imposed by the statute. Upon conviction of a defendant the court may impose a proper sentence to be suspended upon any reasonable conditions set by the judge. If a proper sentence to prison is imposed and suspended on condition that the defendant not drive a motor vehicle for a specified period, if the defendant procures the restoration of his driver's license and drives a vehicle before the expiration of the time so fixed by the judge, such driving is not a violation of the Motor Vehicle law but does warrant the putting into effect of the suspended prison sentence.

LICENSE TAX; MORE THAN ONE LOCATION

23 September 1952

When a motor vehicle dealer and repairman in order to expand his place of business erects a building directly across the street from his original establishment and maintains all office records and makes all contracts with customers at the original establishment, using the new building only as an annex for a part of the repair work, the new building is not a separate location so as to require an additional license.

FRANCHISE TAX; EXEMPTIONS; INCOME TAX; DEDUCTIONS

23 September 1952

A non-stock, non-profit corporation organized and operated exclusively for the encouragement and greater appreciation of poetry is exempt from the franchise tax of the State, and from the State income tax. Contributions to such corporation may be deducted by the donors in determining their taxable net incomes.

POWELL BILL FUNDS; EXPENDITURE FOR PAVING
WITH OR WITHOUT LOCAL ASSESSMENTS

23 September 1952

Powell Bill funds may be spent for paying all of the cost of paving a city street not on the State Highway System or the city's part when abutting property is assessed for part of such cost.

MUNICIPAL CORPORATIONS; AUTHORITY TO CLOSE STREETS OR ALLEYS;
LIABILITY FOR DAMAGES TO ABUTTING PROPERTY OWNERS

23 September 1952

Municipalities have the right to close any street or alley in the municipality by adoption of the proper resolution, but might be liable in damages to any abutting property owner by closing thereof.

DEEDS; EXECUTION; ACKNOWLEDGMENT; USE OF LEAD PENCIL

24 September 1952

Although there seems to be no North Carolina case directly in point, it would seem that a deed executed by a competent grantor, signed with a lead pencil and acknowledged before a notary public, is valid. G. S. 39-7, 39-8, 41-1, 10-4. LEE v. PARKER, 171 N. C. 144.

AD VALOREM TAXES; RELEASE OF ONE PARCEL; ESTATE BY ENTIRETIES;
TENANCY IN COMMON

24 September 1952

A lien for ad valorem personal property taxes with respect to personal property owned by a man does not attach to real property owned by such man and his wife as tenants by the entirety.

COUNTIES; FISCAL CONTROL; EXPENDITURE OF SURPLUS FOR
IMPROVEMENTS TO COURTHOUSE AND JAIL

24 September 1952

Counties may legally appropriate a surplus in the general fund for construction of additions or renovations of the courthouse or jail. Surpluses in poor fund, debt service fund, social security fund and school fund can be used only for special purposes for which they were levied.

SCHOOLS; COMPULSORY ATTENDANCE; TEMPORARY EXCUSED ABSENCES

24 September 1952

Pupils may be excused from attendance at school only in accordance with the rules and regulations adopted by the State Board of Education defining "Truancy" and in accord with action taken by the local county board of education in conformity therewith in those cases in which a parent claims a son is needed to stay at home for a limited time to help on the farm or in fishing at a particular season.

MUNICIPAL CORPORATIONS; AUTHORITY TO PROVIDE TRUCK
ROUTES THROUGH MUNICIPALITIES

25 September 1952

Under the provisions of G. S. 160-200(31), the governing board of a municipality has authority to provide for the regulation, diversion, and

limitation of pedestrians and vehicular traffic upon the public streets, highways, and sidewalks of such municipality. G. S. 136-18(e) authorizes the State Highway and Public Works Commission to make rules and regulations with respect to the use of State highways, and municipalities should cooperate with the State Highway and Public Works Commission in diverting traffic over its streets.

PYROTECHNICS; CAP PISTOLS

25 September 1952

Toy cap pistols are not considered pyrotechnics under the law of this State which prohibits the sale, possession or use of pyrotechnics.

MARRIAGE LAWS; AUTHORITY TO RECORD FOREIGN MARRIAGE CERTIFICATE

25 September 1952

There is no provision under the laws of this State whereby a foreign marriage certificate may be registered in the office of the register of deeds of any county in this State.

USURY LAWS; OUT-OF-STATE LENDERS; LOANS MADE BY MAIL

25 September 1952

This State would recognize the validity of a contract made by mail in accordance with the laws of another State if it was entered into in good faith and not for the purpose of evading the usury laws of this State, if the lender transacts his business entirely by mail and the company has no agency or office in North Carolina and carries on no local function in this State except the solicitation by mail.

ESCHEATS; UNCLAIMED DIVIDENDS OR DEPOSITS; UNCLAIMED STOCK CERTIFICATES HELD BY TRUSTEES

26 September 1952

Liquidating dividends of a dissolved corporation, in form of stock certificates and dividends thereon, which have been held for more than five years and unclaimed by the persons entitled thereto escheat to the University.

TAXATION; EXEMPTIONS; PROPERTY PURCHASED BY WORLD WAR VETERANS WITH MONEY RECEIVED FROM THE FEDERAL GOVERNMENT NOT EXEMPT FROM TAXATION

26 September 1952

The Supreme Court of this State, in the case of MARTIN v. GUILFORD COUNTY, 201 N. C. 63, has held that property purchased by a World War Veteran with money received from the Federal Government is not exempt from ad valorem taxation.

LICENSE TAXES; PEDDLERS

26 September 1952

One who carries from place to place and offers to sell or sells booklets containing tokens entitling the buyer to enumerated services at a filling station or garage, which has agreed to perform such services without charge, the proceeds of the booklet being retained by the seller, is a peddler and subject to a state, county, and municipal license tax as such.

DRIVER'S LICENSE; DRUNKEN DRIVING; LIMITED LICENSE

29 September 1952

When a driver operates a motor vehicle during the period of revocation of his license, the Department must add to the revocation period double the time of revocation then in force, and no limited license can be issued to the driver during this time.

MOTOR VEHICLES; DRIVING DRUNK

29 September 1952

It is not a criminal offense to drive an automobile upon the driveway leading from a public highway to a public eating establishment while under the influence of intoxicating liquor. Circumstantial evidence may be sufficient to convict one charged with driving a motor vehicle on the highways while under the influence of intoxicating liquor.

TRUST AND TRUSTEES; CLERK OF THE SUPERIOR COURT; AUTHORITY
TO REQUIRE ACCOUNTING BY TRUSTEE

30 September 1952

Construing together G. S. 36-15, 36-18 and 28-53, it would seem that when the court accepts the resignation of a trustee in a private irrevocable trust agreement, the successor trustee is required to file in the office of the Clerk of the Superior Court an inventory and annual and final accounts to the same extent as the original trustee is required to do.

MUNICIPALITIES; STATUTORY CONSTRUCTION; REPEAL BY IMPLICATION

30 September 1952

The courts do not favor the repeal of statutes by implication. STATE BOARD OF AGRICULTURE v. DRAINAGE DISTRICT, 177 N. C. 222; WINSLOW v. MORTON, 118 N. C. 486; and Black's Interpretation of Laws.

In spite of the foregoing, it would seem that Chapter 1184, Session Laws of 1949 (new Charter for the City of Raleigh) repeals by necessary implication Chapter 293, Public-Local Laws of 1939 (Civil Service Act for all employees except police and firemen).

ATTORNEYS AT LAW; AUTHORITY OF COURT TO REQUIRE ATTORNEY
TO PRODUCE WRITTEN AUTHORITY FOR APPEARANCE

30 September 1952

G. S. 84-11 provides that every attorney who claims to enter an appearance for any person shall, upon being required to do so, produce and file in the clerk's office of the court in which he claims to enter an appearance, a power or authority to that effect signed by the persons or some one of them for whom he is about to enter an appearance.

Although all the cases cited in the General Statutes under this section originated in the Superior Court, it is thought that the language is broad enough to cover appearances in all the courts of North Carolina, including a mayor's court.

LANDLORD AND TENANT; EXECUTION AND LEVY ON UNDIVIDED TOBACCO IN
SATISFACTION OF JUDGMENT RENDERED AGAINST THE TENANT

30 September 1952

The exclusive ownership of crops in the possession of a tenant remains in the landlord until he has set apart the tenant's share. Before a division has been made of the crop the tenant acquires no interest subject to levy and execution in satisfaction of a judgment against the tenant.

PRIVATE DETECTIVES; LICENSE REQUIREMENTS

30 September 1952

A person desiring to engage in the business of being a private detective is required to apply for and secure from the Commissioner of Revenue of this State a license for the privilege of engaging in such business and to pay an annual tax therefor in the amount of \$25.00.

CLERKS OF COURT; ATTACHMENT AND GARNISHMENT; PLAINTIFF'S
UNDERTAKING; SUITS IN FORMA PAUPERIS

30 September 1952

There is no legal authority for permitting a person to institute an attachment proceeding in forma pauperis and thereby be relieved of furnishing the plaintiff's undertaking.

MOTOR VEHICLES; DRIVER'S LICENSE; MEANING OF CONVICTION

1 October 1952

"Conviction" in the Uniform Driver's License Law means final conviction. When the statute requires two convictions within a fixed period of time in order to justify a suspension of the driver's license, the second conviction must become final before the expiration of such period be-

ginning with the date on which the first conviction became final. A conviction is final when affirmed by the appellate court of last resort or when the time for taking an appeal has expired.

COUNTIES AND COUNTY COMMISSIONERS; APPROPRIATIONS
TO BOY SCOUTS OF AMERICA

1 October 1952

There is no legal authority for a board of county commissioners to make an appropriation of public funds to the organization known as the Boy Scouts of America.

MUNICIPAL CORPORATIONS; TOWN POLICEMEN; QUALIFICATIONS

1 October 1952

In order to qualify as a policeman of a municipality, a person must be at least twenty-one years of age and be a resident of the municipality which he is to serve.

AD VALOREM TAXES; SALE OF TAX LIENS; EFFECT
OF DELAY IN HOLDING SALE

2 October 1952

Failure to hold tax sales within the time prescribed by statute does not affect the validity of the taxes or tax liens and it does not affect the validity of the sale when it is thereafter held.

TORT LIABILITY OF CHURCHES

2 October 1952

A charitable hospital operated not for gain but for benevolent purposes can be held liable in damages for the negligent injury to a servant or employee.

A person injured while enjoying the benefits provided by a charitable institution (Y.W.C.A.) may not hold the institution responsible for the negligence of its agents or employees if the institution has exercised reasonable care in their selection and retention.

CRIMINAL LAW; JUVENILE COURTS; CHILD TWELVE YEARS OF AGE
CHARGED WITH CRIME AGAINST NATURE

2 October 1952

Children under fourteen years of age must have their cases disposed of in the juvenile court, irrespective of the charge or of the type of crime committed.

ADOPTION; SERVICE OF PROCESS; ABANDONMENT

2 October 1952

Where the father of a child refuses to consent, he is a necessary party to an adoption proceeding and should be served with process. If it is contended that he has abandoned the child, then this can be adjudicated in the adoption court upon notice that such an issue will be presented for adjudication.

MUNICIPALITIES; CITY OF KINGS MOUNTAIN; QUORUM
REQUIRED TO TRANSACT BUSINESS

3 October 1952

Construing Section 1, Chapter 684, Session Laws of 1947, together with G. S. 160-268, and G. S. 160-12, it is thought that the Mayor of the City of Kings Mountain is the executive and administrative officer of the City, but that the governing body is composed of the five commissioners of the City. Therefore, it would seem that three commissioners constitute a quorum for the transaction of business whether the mayor is present or not. MARKHAM v. SIMPSON, 175 N. C. 135; CLEVELAND COTTON MILLS v. COMMISSIONERS, 108 N. C. 678.

SALES TAX; SOFT DRINKS

3 October 1952

Soft drinks are not exempt from sales tax.

CRIMINAL PROCEDURE; FORFEITURE OF BAIL BOND

3 October 1952

G. S. 15-116 provides that the forfeiture of a bail bond is in the sound discretion of a trial court. STATE v. MOODY, 74 N. C. 73-136 N. C. 593; STATE v. CLARKE, 222 N. C. 744; STATE v. WIGGINS, 228 N. C. 76.

MUNICIPAL LEASE-PURCHASE CONTRACT; CONTINUING
CONTRACT; PUBLIC BIDDING

3 October 1952

A contract entered into by a municipality in which the municipality leases privately owned water facilities on a year to year basis, with the option to purchase within a stated period, may be valid as a continuing contract under G. S. 160-399, Subsection 1, Subsection D, provided the rental paid is not greater than would be the rental on an outright lease of similar facilities or equipment, the services and value received are in direct proportion to the rental paid, no obligation is imposed upon the City to renew the lease from year to year, or any other future obligation,

and the City, in fact, pays nothing toward the purchase aspect of the contract.

However, it might come within the public letting provisions for purchase of apparatus, supplies, materials, or equipment, of G. S. 143-129.

SCHOOLS; COMPULSORY ATTENDANCE LAW; RESIDENCE OF PUPILS

3 October 1952

G. S. 115-302 and 115-305 provide that children between the ages of seven and sixteen shall attend the public schools unless they are attending approved private schools. G. S. 115-352 provides that children must attend school in the district where they reside unless transferred by the State Board of Education. When children live in North Carolina and enroll in a school in South Carolina and fail to attend school in either State, it is thought that the North Carolina compulsory attendance law is applicable.

SALE OF WEAPONS; .22-CALIBER REVOLVERS

3 October 1952

The requirement of G. S. 14-402, that a permit be first obtained before a pistol may be sold or bought, applies to .22-caliber pistols.

MUNICIPAL CORPORATIONS; ORDINANCES; ENFORCEMENT BY CIVIL PENALTY; ENFORCEMENT UNDER CRIMINAL LAW; COSTS

3 October 1952

A municipal corporation has the authority to frame an ordinance so that the first or second violation will be punished by a civil penalty rather than a fine or imprisonment which is assessed in a criminal case for a violation of the ordinance. The municipality may prosecute a third violation of the ordinance under the criminal law as provided by statute.

MUNICIPALITIES; AUTHORITY TO USE SURPLUS FUNDS FOR NON-PROFIT HOSPITALS

6 October 1952

G. S. 131-126.41 expressly authorizes municipalities to use surplus funds, unappropriated funds and funds derived from profits from alcoholic beverage control stores to guarantee the operating deficit of any publicly owned or nonprofit hospital. G. S. 131-126.42 and 131-126.43 grant the special approval of the General Assembly to counties, cities and towns to issue bonds and notes for the construction of non-profit hospitals and for the purpose of financing the cost of operating the same; and authorizes the levy of a tax on property not to exceed 10 cents on the \$100 valuation for such purpose. These last two sections seem to be in conflict with the decision of the Supreme Court in the case of PALMER v. HAYWOOD COUNTY, 212 N. C. 284.

HOSPITALS; TAX LEVY FOR MAINTENANCE

6 October 1952

A special tax levy for the maintenance of a public hospital should be approved by a vote of the people.

MUNICIPAL CORPORATIONS; VOLUNTARY FIRE DEPARTMENT; REQUIREMENT THAT FUNDS BE DEPOSITED IN TOWN TREASURY

7 October 1952

Funds raised by firemen of a non-paid voluntary fire department are not public funds and do not have to be deposited in the treasury of the town.

MUNICIPALITIES; CONSTRUCTION OF MUNICIPAL BUILDINGS TO HOUSE HEALTH DEPARTMENTS; NECESSARY EXPENSE

7 October 1952

The General Laws, G. S. 160-229 et seq., as well as the 1907 charter, would constitute sufficient authority for the City of Rocky Mount to set up a municipal health department as it has done.

While there is no case directly passing upon the subject, in view of the fact that our court has upheld as a necessary expense the construction of an auditorium and the construction of an abattoir, the court would probably hold that the erection of a building necessary to house a duly authorized municipal health department would be a necessary expense and that a vote of the people of the city would not be required under Article VII, Section 7, of the Constitution to authorize the bonds for this purpose.

ELECTION LAWS; ELECTION OFFICIALS; QUALIFICATIONS

7 October 1952

There is no legal objection to a person serving as a judge of elections who is at the same time employed as a teacher in the public schools of the State.

SCHOOLS; EXCLUSION OF PUPILS ON MORAL GROUNDS

8 October 1952

Under G. S. 115-145, it is thought that the school authorities are authorized to suspend a pupil who is the mother of an illegitimate child provided such pupil is a menace to the school in setting a bad example to other pupils.

COUNTIES; TORT LIABILITY

8 October 1952

Counties are instrumentalities of government and are given corporate powers to execute their purposes and are not liable for damages for the

torts of their officials in the absence of statutory provisions giving a right of action against them. *KEENAN v. COMMISSIONERS*, 167 N. C. 356 and cases cited. Session Laws of 1951 permits cities and towns to waive immunity to the extent that they are insured against tort liability to waive immunity in the operation of motor vehicles. This Act, however, does not apply to counties.

MOTOR VEHICLES; DRIVER'S LICENSE; SUSPENDED SENTENCE

9 October 1952

Only the Motor Vehicles Department is authorized to suspend or revoke a driver's license. However, a court convicting a person of violation of the Motor Vehicle Law may impose sentence and suspend that sentence on any reasonable condition, including the condition that the defendant not drive a motor vehicle for a reasonable, fixed time. In addition the Motor Vehicle Department may in a proper case suspend the driver's license for the time specified in the Driver's License Law. One who drives while his license is suspended or revoked by the Motor Vehicle Department is guilty of a further violation of the Motor Vehicle Law. When the period of suspension imposed by the Motor Vehicle Department expires, the person is entitled to a restoration of his driver's license upon complying with the Financial Responsibility Act. If he drives after such restoration of his license but before the end of the time fixed by the court in suspending the original sentence, the person is not guilty of a new violation of the Motor Vehicle Law but the court may put into effect its original sentence.

ILLEGAL PRACTICE OF LAW; JUSTICE OF THE PEACE MAY NOT DRAW DEEDS

9 October 1952

It is unlawful for a justice of the peace or a notary public to draft deeds or other legal instruments. See G. S. 84-2.1.

POSTING ADVERTISEMENTS ON HIGHWAYS AND STREETS

9 October 1952

General Statutes, Section 14-145, makes it unlawful to post any business or commercial advertising on property of another without first obtaining the written consent of the owner. This section also makes it illegal to post such notices on any stone, tree, fence, stump, pole, mile board, milestone, danger sign, danger signal, guidesign, guidepost, automobile, building, or other object, within the limits of the public highway.

ELECTIONS; INSPECTION OF RECORD OF ABSENTEE BALLOTS

9 October 1952

G. S. 163-53 provides that the State Board of Elections shall furnish to the Chairman of the County Board of Elections of each county a book for the registration of absent voters. G. S. 163-63 provides that the register of applications for absentee ballots required to be kept by the

Chairman of the County Board of Elections shall constitute a public record and shall be opened for public inspection. G. S. 163-59 and succeeding sections provide for the transfer of absentee ballots by the Chairman of the County Board of Elections to each registrar, for the posting of the list of absentee voters, for depositing absentee ballots in the ballot boxes and recording the same.

From the foregoing it will be seen that political party officials, along with all other interested citizens, may inspect the records of absentee ballots in the office of the County Board of Elections at all reasonable times. However, such officials may not use the provisions of the statute G. S. 163-63 to harass members of the County Board of Elections or their employees or to interfere with the necessary work of the County Board of Elections.

ELECTIONS; COMPENSATION OF REGISTRARS

9 October 1952

G. S. 163-19 and 163-20 fix the compensation of precinct election officials. The last sentence of G. S. 163-20 stipulates that the Board of Commissioners of any county may provide for additional compensation for such precinct election officials. Under the foregoing statutes it is thought that private organizations may not give extra compensation to the registrars for the performance of their duties. To allow such practice could easily lead to abuses.

CONSTITUTIONAL LAW; COURTS; ESTABLISHMENT OF INFERIOR COURTS WITH COUNTY-WIDE JURISDICTION

9 October 1952

Article II, Section 29 of the State Constitution forbids the establishment of courts inferior to the Superior Court by any local, private or special act of the Legislature. In the case of *STATE v. HORNE*, 191 N. C. 375, the Supreme Court held that the adoption of this constitutional provision did not have the effect of abolishing such courts already established and that there is nothing in this section which prohibits the Legislature from increasing or decreasing the jurisdiction of such an inferior court already in existence. The last sentence of this constitutional provision provides that the General Assembly shall have power to pass general laws regulating all matters set out in the section. From the foregoing it will be seen that the General Assembly by special Act may not create an inferior court for Gaston County.

SCHOOLS; CURRENT EXPENSE BUDGET; TRANSFER TO CAPITAL OUTLAY BUDGET

10 October 1952

Under G. S. 115-361 and 115-362 local supplements shall be for the purpose of operating schools of a higher standard than that provided by

State support, or to employ additional vocational teachers, or both. G. S. 115-356 provides that the objects of school expenditure designated in the budget as maintenance of plant and fixed charges shall be supplied from fines, forfeitures, etc., and from sources other than State funds. G. S. 115-83 places upon boards of county commissioners primary responsibility for providing the funds necessary for school buildings and equipment. *JOHNSON v. MARROW*, 228 N. C. 58; *ATKINS v. McADEN*, 229 N. C. 752.

G. S. 153-124 provides that in making the tax levy, boards of commissioners shall take into consideration unencumbered balances carried over from the preceding fiscal year and the estimated miscellaneous revenues from sources other than taxation.

From the foregoing, it is to be doubted that the Board of Trustees of a City Administrative School unit have authority to transfer funds from the current expense budget to the capital outlay budget. See *SCHOOL TRUSTEES v. BANNER*, 222 N. C. 566.

ELECTIONS; SERVICEMEN; ABSENTEE VOTING; APPLICATIONS FOR ABSENTEE BALLOTS

10 October 1952

Application for an absentee ballot in a general election can be made by the serviceman or any member of his immediate family, as defined in the statute. An application for absentee ballots in the primary and for the general election ballots made at the same time is sufficient to justify the sending of absentee ballots to the serviceman voter for the general election.

SCHOOLS; MARRIED PUPILS; COMPULSORY ATTENDANCE

13 October 1952

It is thought that a married pupil under sixteen years of age is subject to the compulsory school attendance law. G. S. 115-302. However, it is doubtful that a jury would convict a husband of the violation of G. S. 115-305 for failure to send his wife to school particularly in a case in which the wife is attending a beauty culture school learning a type of work in which she could probably make a living.

ELECTION LAWS; JUSTICES OF THE PEACE; ABSENTEE BALLOTS

13 October 1952

G. S. 163-58 provides that an absentee voter shall make and subscribe to the affidavit before an officer authorized by law to administer oaths, *having an official seal*, which seal shall be affixed. Since a justice of the peace is not required to have an official seal, it is doubtful that a justice of the peace is qualified to act in such case.

AD VALOREM TAXES; PERSONAL PROPERTY; INTER-URBAN BUSES; SITUS

13 October 1952

Buses operated by a transportation company, the office, garage and station of which are outside of the corporate limits of the particular municipality, would not be subject to the personal property ad valorem tax of such municipality.

AD VALOREM TAXES; PROPER LISTING; ERROR IN TRANSFER
TO DELINQUENT TAX BOOK; EFFECT

13 October 1952

An error in copying or transferring taxes from one book to a delinquent tax book does not have the effect of extinguishing any tax lien existing with respect to the property concerning which the error was made.

INCOME TAX; CONTRIBUTIONS; RECREATIONAL FACILITIES

13 October 1952

If a corporation is created to operate and does operate recreational facilities which may be used by the public, is not operated for profit, and such profits as may arise therefrom are not distributable to any stockholder or individual, it is a corporation organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual. Donations to such corporation may be claimed as deductions by the donor for the purpose of determining the donor's income tax liability.

MOTOR VEHICLES; UNSATISFIED JUDGMENT; ACCIDENT BY AGENT

13 October 1952

When a judgment has been rendered against an employer on account of an accident involving his employee, and the judgment remains unsatisfied for the period of the statute, the license and plates of the employer shall be revoked.

MOTOR VEHICLES; RULES OF ROAD; SCHOOLS

13 October 1952

A motorist who disregards a stop-and-go signal operated by members of the school boy patrol may be guilty of reckless driving. He may also be guilty of driving at a speed greater than is reasonable and prudent under the conditions then existing.

CRIMINAL LAW; INTOXICATING LIQUOR; POSSESSION BY MEMBERS OF A
CLUB IN LOCKERS; SEARCH WARRANTS

13 October 1952

A person living in a dry county may not keep alcoholic beverages in places other than his private dwelling, and then only for the use of himself and his *bona fide* guests. Such alcoholic beverages may not be kept in a private club and stored in private lockers.

Our Court has not passed upon the question of whether or not a search warrant authorizing officers to search a private club extends to private lockers of individual members located in such club. Courts in other jurisdictions appear to have held that such lockers may be searched under a valid search warrant issued for the premises.

MOTOR VEHICLES; RED LIGHTS; WRECKERS

14 October 1952

The prohibition against driving a vehicle on which there are red lights visible from the front of the vehicle does not apply to wreckers.

SALES TAX; LIEN; TRANSFeree LIABILITY; TAXES
EXCEEDING PURCHASE PRICE

14 October 1952

A transferee is personally liable for the unpaid sales taxes of his transferor only to the extent of the total purchase price paid.

MUNICIPALITIES; ELECTIONS; PROCEDURE FOR CALLING ELECTION IN
GREENVILLE FOR ADOPTION OF NEW PLAN OF GOVERNMENT

14 October 1952

G. S. 160-296 provides that a petition for the adoption of a new plan of government by a municipality must be addressed to the County Board of Elections. However, under Chapter 296, Public-Local Laws of 1937 a part of the Charter of the City of Greenville, it is thought that in that city such petition is addressed to the Board of Aldermen and not to the County Board of Elections.

MOTOR VEHICLES; REGISTRATION PLATES; FINANCIAL RESPONSIBILITY ACT;
RIGHT OF LESSEE TO PROCURE

17 October 1952

Plates revoked under the Financial Responsibility Act cannot be returned for purposes of leasing the equipment.

PLUMBING AND HEATING CONTRACTORS; REQUIREMENTS FOR LICENSE

17 October 1952

All persons engaged in the business of plumbing and heating contracting are required to apply for and obtain a license from the State Board of Examiners of Plumbing and Heating Contractors. This Act does not apply to towns having a population of 3,500 or less.

CONDEMNATION PROCEEDINGS; SCHOOL LAW; RIGHT OF TRUSTEES OF A SCHOOL UNIT TO DISCONTINUE CONDEMNATION PROCEEDINGS

17 October 1952

Condemnation proceedings may be discontinued at any time prior to taking possession of the property and the payment into Court of the award of the commissioners. LIGHT COMPANY v. MANUFACTURING COMPANY, 209 N. C. 560.

BEER AND WINE; ILLEGAL TRANSPORTATION; CONFISCATION OF AUTOMOBILE

17 October 1952

Construing together G. S. 18-81(i); 18-81(m); 18-64; 18-66; 18-49; 18-32 and 18-6, it is thought that a person in McDowell County possessing in any quantity beer which does not bear the crown tax stamp required by law is guilty of the illegal possession of beer. It is also thought that, upon conviction for illegal transportation of beer not bearing the crown tax stamp, the vehicle used is subject to confiscation. This would likewise seem to be true when the beer bears the stamp but is more than five gallons in quantity.

ELECTIONS; SECRET BALLOT; NO LEGAL REQUIREMENT THAT VOTER MUST VOTE FOR CANDIDATES OF PARTY IN WHOSE PRIMARY HE PARTICIPATED

17 October 1952

Under the Australian Ballot Law, a secret ballot is required in all general elections. While a voter may be morally bound to support the candidate of the party to which he belongs, and in which primary he participated, there is no legal requirement that he shall do so in voting in the election.

AD VALOREM TAXES; LEVY ON PERSONAL PROPERTY; WIFE'S PROPERTY NOT SUBJECT TO HUSBAND'S TAXES

20 October 1952

Property individually owned by a wife is not subject to levy and sale to collect property taxes owed by the husband.

LICENSE TAXES; DRINK DISPENSERS; SECTIONS 130½ AND 144
OF THE REVENUE ACT

20 October 1952

Cities and towns may tax each location of drink dispensers under Section 144 of the Revenue Act but may not additionally tax each individual dispenser.

ELECTION LAWS; RESIDENCE REQUIREMENTS

20 October 1952

Whether or not a person has lost his residence in the voting precinct from which he removed is a mixed question of physical facts and intention. If, in the opinion of the board, a person has only temporarily removed himself from his former residence and has the bona fide intention of returning thereto at some future date, he should be permitted to vote in the precinct in which he formerly resided.

ELECTION LAWS; QUALIFICATIONS FOR VOTING; DOMICILE

20 October 1952

The term "residence" as used in Article VI, Section 2, of the State Constitution, is synonymous with domicile, which denotes a permanent dwelling place to which the party when absent always intends to return. *STATE v. GRIZZARD*, 89 N. C. 115; *GOWER v. CARTER*, 195 N. C. 697 and *OWENS v. CHAPLIN*, 228 N. C. 705. G. S. 163-25(a) (b).

ELECTION; APPLICATION FOR ABSENTEE BALLOTS

20 October 1952

Applications for absentee ballots should be delivered only to the voter or a member of the voter's immediate family, as defined in G. S. 163-55, or to an agent of the voter with written authority from the voter, or an agent of the voter who gives the Chairman, in writing, a statement that the voter had constituted him his agent to obtain the application. The Chairman of the County Board of Elections is the sole custodian of blank applications for absentee ballots and he is required by law to issue the same only in strict accordance with the provisions of the statute.

SCHOOLS; ATTENDANCE; DISTRICT OR SCHOOL IN WHICH CHILD
REQUIRED TO ATTEND

20 October 1952

When school children are to be transferred from one district to another or from one school administrative unit to another, the consent of the State Board of Education is necessary, but when the transfer is simply from

one school to another within the same district, it would seem that the authority to make such transfer is in the County Board of Education. G. S. 115-352, 115-55; 115-56; 115-376. KEY v. BOARD, 170 N. C. 123.

ELECTION LAWS; QUALIFICATION OF ELECTORS; SCHOOL TEACHERS

20 October 1952

School teachers are permitted by law to retain their original residence for voting purposes when they leave home for the purpose only of teaching school in another county when they do so with the intention or expectation of returning to the county of their parents or other relatives during the vacation period. Residence, within the purview of the Constitution relating to qualifications of voters, is synonymous with domicile, denoting a permanent place to which the party, when absent, intends to return.

COURTS; MUNICIPAL RECORDER; DOUBLE OFFICE HOLDING

21 October 1952

Section 6, Chapter 963, Session Laws of 1951, provides that in case a municipal Recorder's Court shall be established for the Town of Dallas under the provisions of Article 24, Chapter 7 of the General Statutes, and should both the offices of Recorder and Vice Recorder become vacant at the same time, the Mayor of the Town of Dallas shall perform the duties of Recorder until a Recorder *shall have been duly elected and qualified*. The foregoing indicates that the legislative intent was that the Mayor shall perform the duties of Recorder only temporarily and until the vacancy can be filled as provided in Section 1 of the Act. It is doubtful that the provision of the Act stipulating that the Mayor shall perform the duties temporarily is valid. Article XIV, Section 7, of the State Constitution. FREEMAN v. COMMISSIONERS OF MADISON, 217 N. C. 209; McCULLERS v. COMMISSIONERS, 158 N. C. 75; RHODES v. LOVE, 153 N. C. 468; GRIMES v. HOLMES, 207 N. C. 293; IN RE WINGLER, 231 N. C. 560 and EDWARDS v. BOARD OF EDUCATION, 235 N. C. 345.

MUNICIPAL CORPORATIONS; RESIDENCE REQUIREMENTS OF CITY POLICEMEN; DE FACTO OFFICERS

22 October 1952

The official acts of a police officer who resides outside the corporate limits of the municipality which he serves could not be collaterally attacked by questioning the legality of any arrest he might make or any other performance of his official duties when such a policeman acts in his capacity as a peace officer. In such cases, the officer would be acting in a *de facto* capacity.

The only remedy which any person might have against him would be in the nature of an action in *quo warranto* to try the title to the office which he purports to hold. Our Supreme Court has consistently held that an action in *quo warranto* is the sole method by which title to public office may

be tried. SEE WRENN v. KURE BEACH, 235 N. C. 292. See, also, FREEMAN v. PONDER, 234 N. C. 294, and cases cited.

AMENDMENT OF NORTH CAROLINA CONSTITUTION; VOTES CAST;
ARTICLE XIII, SECTION 2

22 October 1952

The phrase "majority of the votes cast" in Article XIII, Section 2, of the North Carolina Constitution, means majority of the votes cast for or against the amendment.

CLERK SUPERIOR COURT; INVESTMENT OF TRUST FUNDS; AUTHORITY OF CLERK
TO HAVE CUSTODY OF INVESTMENTS OF OTHER FIDUCIARIES

22 October 1952

G. S. 63-3 authorizes guardians, executors, administrators, clerks of the superior court and others acting in a fiduciary capacity to invest funds in their hands as such fiduciaries in stock in any building and loan association authorized and licensed under the laws of this State. Such funds may be so invested only if authorized by the Insurance Commissioner.

I do not understand that this statute or any other statute would authorize the clerk of the superior court to accept and keep safe certificates of stock in a building and loan association other than such certificates in which the clerk has invested funds in his hands in a fiduciary capacity.

CHARTER OF THE CITY OF HIGH POINT; WHAT IS INCLUDED IN "GENERAL

REVENUE" OF CITY, WITHIN THE MEANING OF SECTION
6 OF THE CITY CHARTER

23 October 1952

The term "General Revenue" as used in the section of the City Charter of High Point, limiting the amount of the general revenue which might be appropriated for library purposes, has reference to the general municipal revenue from ad valorem and other taxes, and not net revenue from its electric system.

- (1) MOTOR VEHICLES; TITLE AND REGISTRATION; VEHICLE FURNISHED DISABLED VETERAN BY VETERANS ADMINISTRATION; \$1.00 FEE
- (2) AD VALOREM TAXES; PERSONAL PROPERTY; EXEMPTIONS; VEHICLE FURNISHED DISABLED VETERAN BY VETERANS ADMINISTRATION; \$1.00 FEE
- (3) SALES TAX; EXEMPTIONS; VEHICLE FURNISHED DISABLED VETERAN BY VETERANS ADMINISTRATION; \$1.00 FEE; EXCESS OVER \$1600.00
SUBJECT TO TAX

23 October 1952

When a motor vehicle is furnished a disabled veteran by the Veterans Administration, or an automobile is purchased by a veteran with funds

furnished for such purpose, only a \$1.00 license tag fee is charged, sales tax is charged only with respect to the purchase price in excess of the \$1600.00 furnished by the government, and such automobile is exempt from ad valorem property taxation so long as the veteran owns such vehicle.

HABEAS CORPUS; WRIT OF CORAM NOBIS; CHAPTER 1083, SESSION
LAWS OF 1951; CRIMINAL PROCEDURE

24 October 1952

Chapter 1083 of the Session Laws of 1951 is the result of an effort by the General Assembly to supersede the common-law writ of coram nobis and could not supersede writs of habeas corpus.

CORONERS; AUTHORITY TO ARREST SHERIFF

24 October 1952

Under G. S. 152-8 it is thought that the coroner is the only official in North Carolina authorized the serve civil or criminal process upon the Sheriff.

ELECTIONS; "DEMOCRATS FOR EISENHOWER;" WATCHERS

27 October 1952

Only political parties as defined in G. S. 163-1 and independent candidates as authorized by G. S. 163-152 are permitted to appoint official watchers, but any citizen can observe the conduct of an election and be present at the counting of the ballots.

ELECTIONS; TOWNSHIP BALLOT; WRITE-IN VOTES

27 October 1952

G. S. 163-155 provides for seven kinds of ballots in the general election, among these are a county ballot and a township ballot. However, the section provides that in the sound discretion of the County Board of Elections, county and township ballots may be combined. When there is such combination, it is thought that a write-in vote for a township office on the county ballot will not amount to a defacing of the ballot, but when there has been no such combination of ballots, it would seem to be otherwise. G. S. 163-155(d), G. S. 163-175(3).

ELECTIONS; APPOINTMENT OF CLERKS OR ASSISTANTS

27 October 1952

Under G. S. 163-15 and 163-181, it would seem that the County Board of Elections may in its discretion appoint an assistant or clerk for any

precinct in which there are at least three hundred qualified registered voters and that in a precinct where there are at least one thousand qualified registered voters, two assistants or clerks may be named in the discretion of the County Board. The statute is silent as to the party affiliation of such clerks. Therefore, it would seem that the County Board is at liberty to appoint qualified persons from either political party.

COURTS; CRIMINAL PROCEDURE; VENUE; JURISDICTION

27 October 1952

Under G. S. 1-5(2) it is thought a proceeding on a peace warrant under G. S. 15-28 is a criminal action. See *STATE v. LOCUST*, 63 N. C. 574; *STATE v. LYON*, 93 N. C. 575; *STATE v. OATES*, 88 N. C. 668; *STATE v. PATE*, 44 N. C. 244. G. S. 115-134 provides that the proper plea to improper venue is a plea in abatement. In this State venue in criminal action is jurisdictional. *STATE v. MITCHELL*, 202 N. C. 439; *STATE v. LYTLE*, 117 N. C. 799; *STATE v. LEWIS*, 142 N. C. 626.

For the foregoing reasons it is thought that if a threat to injure the person or property is made in Guilford County against a resident of Randolph County, a Justice of the Peace of Guilford and not Randolph would have original jurisdiction.

COURTS; JURY TRIAL IN MAYOR'S COURT OF CARRBORO

27 October 1952

Construing together Section 10, Chapter 315, Private Laws of 1911, Chapter 97, Private Laws, Extra Session 1913, Section 3, Chapter 116, Private Laws, Extra Session 1921, G. S. 15-157 and G. S. 7-150, it is thought that either the complainant or the defendant in a criminal action in which the Mayor of Carrboro has original jurisdiction is entitled to demand a jury trial.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT; NECESSITY FOR SATISFYING WHEN LICENSE REVOKED PRIOR TO 1947

27 October 1952

An operator whose license was revoked under the Uniform Driver's License Act in 1942 must satisfy the requirements of the Financial Responsibility Act before obtaining a reissuance of his license subsequent to 1947.

AD VALOREM TAXATION; PERSONAL PROPERTY OF NORTH CAROLINA RESIDENT IN ARMED FORCES

27 October 1952

A resident of North Carolina does not lose his residence for ad valorem taxation purposes solely by reason of being stationed elsewhere under military orders.

SCHOOLS; COUNTY TREASURER EX-OFFICIO TREASURER OF
COUNTY SCHOOL FUND

28 October 1952

Construing together G. S. 155-3 and 115-165, the Board of Commissioners of Onslow County is empowered in its discretion to abolish the office of county treasurer and authorize one or more solvent banks in the county to act as fiscal agent for the county. Such fiscal agent is ex-officio treasurer of all county school funds and school district funds in the county administrative unit.

PARTNERSHIPS; DOING BUSINESS UNDER ASSUMED NAME; REGISTRATION

28 October 1952

It would seem that a salesman who buys goods directly from a factory and sells them to the consumer and who is not an agent of the factory is not required to register the name of his business under the provisions of G. S. 66-68(d), when such agent operated his business in his own name and not under an assumed name as defined by statute.

LOTTERY LAWS; SALES PROMOTION SCHEMES

28 October 1952

In order to constitute a lottery in this State, there must be three elements present, to wit: (1) a prize; (2) a consideration; and (3) the winner of the prize must be determined by some formula of chance.

ADOPTION; CONSENT; INSANITY OF NATURAL PARENT

28 October 1952

Where a parent has abandoned a child for some time prior to an adjudication that the parent is insane, such an abandonment having occurred while the parent is presumed to be sane, an adoption court may make a finding as to the abandonment and may appoint some person to give or withhold consent for adoption purposes.

MUNICIPALITIES; EXTENSION OF CITY LIMITS, TAXATION

28 October 1952

Construing together G. S. 160-445, 105-340, 105-333 and 105-280, it is thought that when the corporate limits of a municipality are enlarged under the provisions of Article 36, Chapter 160 of the General Statutes, and when such extension proceedings were completed in May 1952, the newly annexed territory is subject to municipal taxes for the fiscal year beginning July 1, 1952 and ending June 30, 1953. The cases of REYNOLDS v. ASHEVILLE, 199 N. C. 212, and GREEN v. ASHEVILLE, 199 N. C. 516, are distinguishable because of the express provision in the present statute.

DEEDS; WITHDRAWAL AFTER FILING FOR REGISTRATION

29 October 1952

A deed filed for registration cannot be withdrawn from the Register of Deeds' office.

LICENSE TAXES; TRANSFER; SALE OF CORPORATE STOCK

29 October 1952

When all of the stock of a corporation is sold to new owners, the corporation is not required to purchase a new municipal license tax.

ELECTIONS; APPLICATIONS FOR ABSENTEE BALLOTS

29 October 1952

The manner in which an application for absentee ballots had been issued by the chairman of the County Board of Elections would not in any case justify the refusal of the chairman of the County Board of Elections to issue absentee ballots to a timely request by a duly qualified elector for same.

ELECTION LAWS; REGISTRATION OF VOTERS; DUTIES OF
COUNTY BOARD OF ELECTIONS

29 October 1952

G. S. 163-14(10) authorizes county boards of elections "To investigate irregularities, nonperformance of duties, or violations of laws by election officers and other persons; to administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and to report the facts to the prosecuting attorney."

Under G. S. 163-14(4) and G. S. 163-18, county boards of elections have the authority to remove election officials. Any removal, however, should be for cause shown and after a notice of hearing and an opportunity to be heard by the official charged with any irregularity or incompetency.

There is no provision in the election laws for an appeal to a county board of elections from a discretionary ruling on the part of the registrar as to the qualifications of a person to register.

LIABILITY OF A COUNTY FOR DAMAGE TO A HIGHWAY BRIDGE THROUGH
OVER-LOADING OF EQUIPMENT UNDER ITS CONTROL

30 October 1952

Counties are not liable to the State Highway and Public Works Commission for damage to a highway bridge through over-loading of equipment under the control of county officials.

LOCAL SCHOOL FUNDS; METHOD OF DISTRIBUTION TO COUNTY AND
CITY ADMINISTRATIVE UNITS

30 October 1952

Local school funds should be dispersed by the tax collector directly to county and city administrative units, as provided by G. S. 115-368.

AD VALOREM TAXATION; CITY RESIDENTS IN ARMED FORCES OR COLLEGE

30 October 1952

College students and military personnel having permanent residences in a city are subject to city ad valorem taxes as well as county ad valorem taxes.

SEARCH WARRANTS; LENGTH OF TIME A SEARCH WARRANT IS VALID; LENGTH
OF TIME IN WHICH A SEARCH WARRANT MUST BE RETURNED

30 October 1952

The statutes of this State do not fix a specific time for the return of search warrants, and it is thought that search warrants must be returned within a reasonable time which is determined by the circumstances of each particular case.

ADOPTION; CHANGE OF NAME

30 October 1952

Where a child has been adopted and its name has not been changed in the adoption proceeding, and the adopted child has become twenty-one years of age, the name cannot be changed by a motion in the cause in the adoption proceeding, but if any change is made, it must be made under Chapter 131 of the General Statutes.

INTOXICATING LIQUOR; SEIZURE OF AUTOMOBILE TRANSPORTING ILLEGAL
LIQUOR; DRIVER AND OWNER BEING UNKNOWN

30 October 1952

Where an automobile is seized transporting illegal liquor and the driver abandons the car and is unknown, and the owner of the car is unknown, the prosecuting officer of a recorder's court in whose jurisdiction the car is seized may file a petition and ask for a court order to sell the automobile after advertisement as provided by G. S. 18-6 and that portion of said section which deals with cases where owners and drivers are unknown.

SCHOOLS; AUTHORITY TO REMOVE TEACHERS

30 October 1952

Under G. S. 115-77, 115-117 and 115-143, a teacher may be dismissed for immoral or disreputable conduct, for failure to cooperate in teachers'

meetings or for failure to comply with the provisions of his contract. Upon dismissal, the teacher has the right to apply to the county board of education or to the courts for a review of the order of dismissal. *RUSS v. BOARD OF EDUCATION*, 232 N. C. 128; *DAVIS v. MOSELEY*, 230 N. C. 645.

INTOXICATING LIQUOR; G. S. 18-51; PUBLIC DISPLAY OF INTOXICATING LIQUOR

30 October 1952

The Supreme Court has not decided the exact meaning of G. S. 18-51 which prohibits the display of intoxicating liquor at athletic contests or other public places. It is generally the rule of statutory construction that where general terms follow specific terms, the general terms will be construed as relating to the same type and character of terms as those designated in the specific categories.

ELECTION LAW; QUALIFICATIONS FOR VOTING; DOMICILE

31 October 1952

Article VI, Section 2, of the State Constitution, provides that a qualified voter shall reside in the State for one year and in the precinct for four months next preceding the election. Residence, as used in this section, is synonymous with domicile, which denotes a permanent dwelling place, to which the party, when absent, intends to return. The domicile of the husband is prima facie the domicile of the wife. However, in case of a separation, the wife may establish a separate domicile. *STATE v. GRIZZARD*, 89 N. C. 115; *GOWER v. CARTER*, 195 N. C. 697; *OWENS v. CHAPLAIN*, 228 N. C. 705; *IN RE ELLIS*, 187 N. C. 840; *SMITH v. MOREHEAD*, 59 N. C. 360; *HICKS v. SKINNER*, 71 N. C. 539; *MILLER v. MILLER*, 205 N. C. 753; *RECTOR v. RECTOR*, 186 N. C. 618; *STATE v. BEAM*, 181 N. C. 597. G. S. 163-25, G. S. 163-78, G. S. 163-79.

COURTS; JUSTICE OF THE PEACE; RIGHT OF PROSECUTING
WITNESS TO CROSS-EXAMINE DEFENDANT

31 October 1952

A prosecuting witness in a criminal case has an interest in the case because of a private wrong done to him as well as a public wrong; such prosecuting witness can be subjected to the payment of costs on the basis of a frivolous and malicious prosecution and can be subjected to civil suits for malicious prosecution, false arrest and abuse of persons. A justice of the peace, therefore, in his discretion, can allow a prosecuting witness, where there are no attorneys in the case, to cross-examine the defendant when he testified as a witness in his own behalf.

MUNICIPALITIES; REIMBURSEMENT OF TOWN OFFICIALS FOR
EXPENSES IN DEFENDING LAW SUIT

3 November 1952

North Carolina Supreme Court has not passed upon the question as to whether a municipality can appropriate finances to pay the cost and legal expenses incurred by an official in defending the title to his office.

- (1) INCOME TAX; EXEMPTIONS; MILITARY PERSONNEL IN KOREAN CONFLICT
- (2) POLL TAX; EXEMPTIONS; MILITARY PERSONNEL IN KOREAN CONFLICT
- (3) AD VALOREM TAX; LISTING; PENALTIES; MILITARY PERSONNEL
IN KOREAN CONFLICT

4 November 1952

Persons serving in the Armed Forces at present are exempt from poll tax and they may be relieved of all charges in the form of interest or penalty for late listing of property for ad valorem tax purposes. Income derived from service in the Armed Forces is exempt from State income tax.

STATE BONDS OF THE YEARS 1868 AND 1869

5 November 1952

A State bond issued under authority of the ordinance of March 11th 1868 is without value because of the 1879 amendment to Article I, Section 6, of the North Carolina Constitution. North Carolina Constitutional Convention Journal, page 393. *BALTZER v. THE STATE*, 104 N. C. 265; *BALTZER v. NORTH CAROLINA*, 161 U. S. 240.

SCHOOLS; CONSTRUCTION CONTRACTS; AUTHORITY OF CITY SCHOOL BOARD TO
REQUIRE SUCCESSFUL BIDDER TO PAY PREVAILING WAGE SCALE

6 November 1952

G. S. 143-129 provides that when a construction contract is to be let by a county or other subdivision, proposals shall be invited by advertisement which shall reserve to the governing body the right to reject any or all of the proposals. The act specifically stipulates that proposals shall not be rejected for the purpose of evading the provisions of the statute. Under this provision it is doubtful that a board of education has authority to require its architect to restrict his invitation for bids to contractors within a given specified locality. North Carolina has no statute similar to the Davis-Bacon Act, Section 276(a), title 40, U.S.C.A. In the absence of such a statute it is doubtful that a board of education has authority to require its architect to specify that successful bidders on schoolhouses must pay the prevailing wage scale.

PYROTECHNICS; SALE OF FIREARMS BY MAIL ORDER

6 November 1952

Article 54 of Chapter 14 of the General Statutes of this State makes it unlawful for any person, firm or corporation to manufacture, purchase, sell, deal in, transport, possess, receive, advertise, use or cause to be discharged any pyrotechnics of any description whatsoever within the State of North Carolina.

This statute permits the exhibition of pyrotechnics at public exhibitions, such as fairs and carnivals, provided such exhibitions are under the supervision of experts who have previously secured written authority from the board of county commissioners of the county in which such pyrotechnics are to be exhibited.

This statute also provides that it shall not be unlawful for a common carrier to receive, transport and deliver pyrotechnics in the regular course of its business. However, in the case of the sale or purchase of pyrotechnics, where the delivery thereof was made by common carrier, the sale shall be deemed to be made in the county wherein the delivery was made by such carrier to the consignee.

DOG TAX; KENNEL TAX IN COUNTIES WITHOUT DOG WARDENS

6 November 1952

The kennel tax provided in Chapter 931 of the 1951 Session Laws is applicable only in those counties where a dog warden has been appointed pursuant to such chapter.

AD VALOREM TAXES; LISTING; PENALTIES; MILITARY PERSONNEL IN KOREA

7 November 1952

Although a member of the Armed Forces is under a statutory duty to list his property for ad valorem taxation, the Board of County Commissioners has discretionary authority to relieve the soldier from the payment of any charges in the form of interest or penalty with respect to ad valorem taxes. In any event, if the Board failed to relieve the soldier of the penalty and interest, the provisions of the Soldiers' and Sailors' Civil Relief Act would apply and this Act would limit the penalty and interest at the rate of 6%.

CONSERVATION AND DEVELOPMENT; FISHING IN PRIVATELY-OWNED LAKES
AND PONDS; LICENSES

7 November 1952

Under G. S. 113-146 a resident county license is required of those persons fishing with lures or baits of an artificial type. Regulation No. -52(b) and (c) exempts private ponds. A private pond is defined as bodies of water arising within and lying wholly upon the lands of a single owner or a single group of joint owners or tenants in common and

from which fish cannot escape and into which fish of legal size cannot enter from public waters at any time.

COUNTIES; TREASURER; NAMING OF BANKS AS FISCAL AGENT; TERM OF SERVICE; APPOINTMENT OF ONE OR MORE BANKS

7 November 1952

A county may name one or more banks or trust companies as fiscal agent and abolish the office of county treasurer in certain counties named in the statute.

SCHOOLS; TITLE TO ACTIVITY BUSES; TORT LIABILITY OF LOCAL SCHOOL AUTHORITIES; LIABILITY INSURANCE

7 November 1952

There seems to be no statutory provision as to taking title to school activity buses. The procedure is not uniform in the schools of North Carolina. If an individual takes title he will become liable for injuries to persons and for property damages under the doctrine of respondent superior. Any person contracting to purchase such bus is of course liable on his contract. It is understood that some insurance companies will write liability policies on such buses when they have been assured that some responsible and careful person will at all times be entrusted with the operation of such bus. Since the bus is used in connection with a particular school it does not seem advisable to purchase such a bus without the consent of the local school committee and the county board of education.

ELECTION LAWS; BALLOTS; USE OF SAMPLE BALLOTS AS OFFICIAL BALLOTS

7 November 1952

Where there is an agreement among precinct election officials to use sample ballots as official ballots, and where official ballots are not readily available for use by electors, any votes cast on such sample ballots should be counted in determining the result of an election.

MOTOR VEHICLES; REGISTRATION; RECIPROCITY PROVISION FOR RESIDENT OF OHIO ESTABLISHING RESIDENCE IN NORTH CAROLINA

8 November 1952

A resident of Ohio establishing permanent residence in North Carolina has thirty days from the date of his arrival within which to obtain proper North Carolina license and registration.

MOTOR VEHICLES; DRIVER'S LICENSE; MEANING OF FINAL CONVICTION FOR DETERMINING WHETHER OPERATOR CONVICTED OF SECOND OFFENSE

10 November 1952

Operator was convicted of drunken driving on June 12, 1947. He withdrew his appeal to the Superior Court on September 8, 1947. He was sub-

sequently convicted of drunken driving. The conviction in 1947 should not be considered in determining whether the present conviction is for a second offense.

(1) AD VALOREM TAXES; GARNISHMENT; BANK ACCOUNTS

(2) GARNISHMENT; AD VALOREM TAXES; BANK ACCOUNT

10 November 1952

Nothing else appearing, the private individual bank account of an officer of a corporation is not subject to garnishment by reason of any tax liability of the corporation.

POLL TAX; MEMBERS OF ARMED FORCES OR MERCHANT MARINE

10 November 1952

A member of the Merchant Marine is at the present time exempt from the payment of poll taxes.

PROBATE AND REGISTRATION; FORM OF CERTIFICATE OF PROOF
OF WRITTEN INSTRUMENTS

10 November 1952

A certificate of proof of a written instrument may be in substantially the form required by G. S. 47-38 and G. S. 47-43.2 if it contains a statement of the facts required for such certificates, although it may not contain the special words "do hereby certify" which are found in the statutory form.

ELECTIONS; MARKING BALLOTS; BALLOT MARKED FOR STRAIGHT TICKET PLUS
ADDITIONAL MARKS UNDER THE SAME PARTY COLUMN

12 November 1952

Where an elector marks a ballot for a straight party ticket and then, in addition, marks the names of some of the candidates under the straight ticket but does not mark all of the candidates under the straight ticket, the ballot should, nevertheless, be counted as a vote for a straight ticket, and the additional mark should be regarded as surplusage.

MUNICIPALITIES; STATE HIGHWAYS; POWELL BILL;
FURNISHING RIGHTS OF WAYS

12 November 1952

G. S. 136-41.1 provides that all streets within municipalities forming a part of the State Highway system shall be constructed, maintained, etc., in the same manner as roads and highways of like nature outside the corporate limits and the cost of such activities shall be paid from the

State Highway and Public Works Fund, "Provided, that municipalities shall be required to provide one-third of the cost of the acquisition of right of way for new streets or for regulating or widening old streets."

The language of the proviso would seem to be mandatory.

SHERIFFS; FEES; MILEAGE; CHAPTER 634, SESSION LAWS OF 1951

12 November 1952

The ten cents per mile allowed peace officers in Avery County for conveying prisoners to jail, or from one jail to another, or to any place of punishment, or to appear before any court, means ten cents per mile computed on the basis of a round-trip.

ELECTIONS; DUTY OF CLERK AS TO QUALIFYING CONSTABLE WHO HAD BEEN ADJUDGED NON COMPOS MENTIS IN 1922

12 November 1952

The Clerk of the Superior Court, in administering the oath of office to a constable, is not required to pass upon his mental capacity and as to whether or not he is disqualified from holding office on account of being an idiot or a lunatic.

EXECUTORS AND ADMINISTRATORS; QUALIFICATIONS; GROUNDS FOR REMOVAL

12 November 1952

Construing together G. S. 29-6(a) (2) and (4), G. S. 28-15, G. S. 28-20 (1) and G. S. 28-32, it would seem that the next of kin of the deceased person has the right to administer upon his estate within six months after his death or in lieu thereof within that time to select and recommend such person as he may prefer, and if his nominee is suitable in character, habits and intellect, to demand his appointment; when six months has elapsed from the death of the deceased and no letters testamentary or letters of administration or collection have been applied for and issued to any person, the public administrator is entitled to qualify; but if there is no public administrator in the county or if the public administrator fails to qualify, the field is open to the Clerk to treat all rights of preference as renounced and to appoint in the exercise of his discretion some suitable person to administer the estate. When such appointment has been made, after the elapse of six months from the death and one of the next of kin then applies for appointment, it is thought that the Clerk does not have the discretionary authority to remove the present administrator without cause and simply for the purpose of permitting a member of the family to qualify. WILLIAMS v. NEVILLE, 108 N. C. 559; HILL v. ALSPAUGH, 72 N. C. 402; IN RE ESTATE OF SMITH, 210 N. C. 622; BROOKS v. CLEMENT COMPANY, 201 N. C. 768; IN RE ESTATE OF JONES, 177 N. C. 337; IN RE BAILEY'S WILL, 141 N. C. 193; STOKER v. KENDALL, 44 N. C. 242.

SANITARY DISTRICT; AUTHORITY TO DELEGATE TO EMPLOYEE OF TOWN DUTY
OF READING METERS AND COLLECTING WATER AND METER RENTS

12 November 1952

A sanitary district organized under G. S. 130-33, et seq, does not have the authority to delegate to a town the performance of the duties of reading meters, collecting water and water rents and keeping books and records of the district by an employee of the town.

AD VALOREM TAXATION; EXEMPTIONS; PRIVATE BUSINESS COLLEGES

12 November 1952

Realty and personalty of privately owned business colleges operated for profit are exempt from ad valorem taxation so long as the property is devoted wholly to educational purposes.

SCHOOLS; ATTENDANCE AGE; TRANSFER OF CHILD FROM OUT OF STATE

13 November 1952

Under G. S. 115-371, it is thought that a child born on October 2nd 1946 is eligible to attend the public schools during the school year 1952-53 provided he enrolls during the first month of the school year. However, it is thought that this statute would not entitle a child born on November 18th 1946 to enroll in a public school of North Carolina after January 1, 1953 even though such child has during the fall term attended school in another State applying a different rule. G. S. 115-371; STATE v. MASON, 66 N. C. 636.

SCHOOLS; SCHOOL BUSES; AUTHORITY OF COUNTY BOARD OF EDUCATION

13 November 1952

The superintendent or principal at the termination of a school bus route, with the approval of the school committeemen or trustees, and the county or city superintendent of schools, employs school bus drivers. The county board of education has no right to do so, but may remove any principal or superintendent who refuses to act.

CLERKS OF THE SUPERIOR COURT; FEES; COMMISSIONS ON SUMS OF MONEY
PAID INTO CLERK'S OFFICE BY VIRTUE OF HIS OFFICE

14 November 1952

The clerk of the Superior Court, under his general fee bill, is entitled to a commission on process tax, jury tax and stenographer's fees paid into his office by virtue of his office. He is not entitled to deduct any commission on the sums paid into his office which are transmitted to the State Treasurer for the Law Enforcement Officers' Benefit and Retirement Fund.

MOTOR VEHICLES; RULES OF THE ROAD; USE OF THE "WHAMMY"

17 November 1952

Evidence obtained from the whammy should be admitted in motor vehicle violation cases until the Supreme Court declares such evidence incompetent.

DEED OF TRUST; CANCELLATION OF RECORD

17 November 1952

G. S. 45-37(1) authorizes the trustee or mortgagee in the presence of the Register of Deeds or his Deputy to make an entry of satisfaction of the provisions of the deed of trust or mortgage upon the margin of the record, which entry shall be signed by the trustee or mortgagee and witnessed by the Register of Deeds or his deputy. This entry has the effect of reconveying title to the mortgaged property to the mortgagor.

COUNTIES; DETENTION HOME; PURPOSES FOR WHICH A CAPITAL RESERVE FUND MAY BE USED

17 November 1952

A detention home for the temporary detention of children coming within the jurisdiction of juvenile or domestic relations courts (G. S. 110-30), would seem to be a jail within the contemplation of G. S. 153-142.9(a) (2). Therefore, it would seem that Commissioners of Buncombe County have the authority to transfer approximately \$22,000 from the Capital Reserve Fund of the County in order to complete such a detention home and upon compliance with the provisions of Article 10A, Chapter 153 of the General Statutes of North Carolina. STATE v. BRYAN, 89 N. C. 531.

DOUBLE OFFICE HOLDING; NOTARY PUBLIC AND COUNTY TAX COLLECTOR

18 November 1952

The office of notary public and that of county tax collector are both public offices within the meaning of Article XIV, § 7, of the Constitution, which prohibits double office holding. However, the office of notary public is exempt from this provision of the Constitution, and one person may hold both these offices at the same time.

DOUBLE OFFICE HOLDING; SOLICITOR OF CITY MUNICIPAL COURT;
SOLICITOR OF COUNTY RECORDER'S COURT

18 November 1952

The office of solicitor of a City Municipal Court and that of solicitor of a County Recorder's Court are both public offices within the meaning of Article XIV, § 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

LOTTERY LAWS; SLOT MACHINES; SHUFFLEBOARD; MINIATURE
SLOT-OPERATED BOWLING ALLEYS

18 November 1952

G. S. 14-306 provides, among other things, that a slot machine is illegal where "in the playing of which the operator or user has a chance to make varying scores or tallies upon the outcome of which wagers might be made, irrespective of whether it may, apart from any element of chance or unpredictable outcome of such operation, also sell, deliver or present some merchandise, indication or weight, entertainment or other thing of value."

ELECTIONS; WRITE-IN VOTES FOR PRESIDENTIAL ELECTORS

18 November 1952

Under the North Carolina Statute, no write-ins can be made for electors for President and Vice President. There is no provision made in our statutes for such write-ins.

MOTOR VEHICLES; RULES OF THE ROAD; NECESSITY
FOR FULL STOP AT STOP SIGNS

18 November 1952

Stop signs require the driver to come to a full stop.

JUSTICES OF THE PEACE; VACANCIES CAUSED BY DEATH BETWEEN
ELECTION AND BEGINNING OF NEW TERM

19 November 1952

A justice of the peace may qualify for office and take the oath prior to the beginning of the term for which he was elected or appointed. After having done so, should such justice of the peace die or resign from office between the time he was elected or appointed and the beginning of his new term, the vacancy created thereby is not an original vacancy which may be filled by the Governor but is a vacancy which is required to be filled by the clerk of the Superior Court.

CHANGING NAMES ON APPLICATIONS FOR MARRIAGE LICENSES

19 November 1952

There is no provision by law whereby a person may have the name appearing on the application for a marriage license altered or changed in the office of a register of deeds.

Under Chapter 101 of the General Statutes, a person may change his name by petitioning the Superior Court of the county in which he resides in the manner set out in the statute.

MOTOR VEHICLES; RULES OF THE ROAD; HIGHWAY AS INCLUDING STREETS

19 November 1952

The word "highway" as used in the Motor Vehicle Act of 1937 includes city streets not a part of the state highway system.

POWELL BILL; RIGHT OF MUNICIPALITY TO PROVIDE CURBS, GUTTERS, AND SIDEWALKS ON STATE HIGHWAY

20 November 1952

The State Highway and Public Works Commission is not required to provide curbs, gutters and catch basins for surplus water on streets which are part of the highway system, and a municipality has authority to construct the same and collect the cost by assessment against abutting property.

PUBLIC RECORDS; WARRANTS IN CRIMINAL CASES

20 November 1952

Criminal warrants issued for the arrest of persons charged are public records and open for inspection at reasonable times and places. Information given police prior to issuance of warrants does not constitute public records.

LICENSE TAXES; SCHEDULE B AUTHORITY OF MUNICIPALITY OVER BUSINESSES OUTSIDE CORPORATE LIMITS

21 November 1952

Normally a city cannot tax businesses conducted outside of the corporate limits.

CONFEDERATE DEBT

21 November 1952

A treasury note issued under authority of Section 1, Chapter 29, Public Laws of North Carolina, Session 1862-1863, is not collectable because of the provisions of Article I, Section 6 and Article VII, Section 12 of the

State Constitution, and Section 4 of the Fourteenth Amendment to the Constitution of the United States.

CONVEYANCES; ESTATES BY THE ENTIRETY; MORTGAGES; MINORS

21 November 1952

When husband and wife own lands as tenants by the entirety and the husband is an infant while the wife is of age, it is thought that the only way that a mortgage may be legally placed upon the property is by virtue of a special proceeding conducted as set out in G. S. 33-31, et seq. It is thought that G. S. 30-10 is not applicable. For a full discussion of tenancy by the entirety, see DAVIS v. BASS, 188 N. C. 200.

CRIMINAL PROCEDURE; FORFEITURE OF RECOGNIZANCE; RETURN OF SCI FA

21 November 1952

Construing together the provisions of G. S. 15-113, G. S. 15-119, G. S. 15-121, G. S. 1-581, Chapter 262, Public-Local Laws of 1917, it is thought that a Sci fa in the Recorder's Court in Vance County may be made returnable to any term provided the surety has had ten days notice of the hearing to which he is entitled under the provisions of G. S. 15-116.

WILLS; TRUSTS; AUTHORITY TO APPOINT A SUCCESSOR TRUSTEE

21 November 1952

From the holdings of the Supreme Court in the cases of IN RE SMITH, 200 N. C. 272, and CHESHIRE v. FIRST PRESBYTERIAN CHURCH, 221 N. C. 205, it would seem that the Clerk of Superior Court does not have the authority under G. S. 36-9 and succeeding sections to appoint a successor to a trustee named in Will when such trustee dies after his qualification.

MUNICIPAL CORPORATIONS; COUNTIES; COUNTY COMMISSIONERS; LIABILITY OF COUNTY COMMISSIONERS FOR MEDICAL TREATMENT AND HOSPITALIZATION OF PRISONER

21 November 1952

A person injured during the course of his arrest for violation of the criminal laws of the State is a prisoner of the State, and all costs, including hospitalization and doctors' bills, are properly chargeable against the county in which such arrest is made. This is true even though such arrests are made by a municipal police officer. See BOARD OF EDUCATION v. HENDERSON, 126 N. C. 689, and SPICER v. WILLIAMSON, 191 N. C. 487.

PUBLIC HEALTH; SANITARY DISTRICTS; EMPLOYEE OF SANITARY DISTRICT;
USE OF TOWN FACILITIES ON COST BASIS

21 November 1952

A sanitary district can enter into an agreement with a town for the use of the town's facilities at cost as an aid to an employee of the sanitary district in reading meters, billing and collecting water rents.

DOMESTIC RELATIONS COURT; JURISDICTION; CASES PENDING IN
SUPERIOR COURT AND INFERIOR COURTS

21 November 1952

When a joint city-county domestic relations court is established, it has sole and exclusive jurisdiction over the offenses designated in G. S. 7-103, and it is the duty of clerks of inferior courts and clerks of Superior Courts to transfer pending cases dealing with these offenses to the domestic relations court.

SALES AND USE TAX; RENTAL OF PERSONAL PROPERTY; SERVICE OF OPERATOR
FURNISHED; SERVICE CHARGE DISTINGUISHED FROM RENTAL

24 November 1952

When one party furnishes to another a crane, including the services of an operator, for a stipulated price per hour the amount charged is in the nature of a service charge and there is in such case no rental of tangible personal property which would be subject to the sales or use tax.

PUBLIC WELFARE; OLD AGE ASSISTANCE; REPAYMENT OF ASSISTANCE
BENEFITS PAID TO RECIPIENT

24 November 1952

An Old Age Assistance recipient wishing to pay off and discharge the amount of assistance received by him and have the lien against him cancelled should pay the same to the county at the same time notifying the superintendent of public welfare that the payment is being made.

PUBLIC WELFARE; OLD AGE ASSISTANCE; CLAIM AGAINST
ESTATE OF RECIPIENT

24 November 1952

Where a sum of money is paid to the administrator of an estate of a recipient of Old Age Assistance under a judgment in a criminal action

instituted because of the death of the recipient, such money is asset to the estate, and the county attorney should file a claim under the Old Age Assistance Lien Law.

PUBLIC WELFARE; OLD AGE ASSISTANCE; LIEN; ATTACHMENT OF LIEN ON
LAND CONVEYED TO CREATE ESTATE BY THE ENTIRETY

24 November 1952

Where a recipient of Old Age Assistance who has a lien filed against her receives title to property as a mere agent for the purpose of reconveying the same to create an estate by the entirety, the State and county should not claim any lien on the property, and the county commissioners should have the lien cancelled provided the recipient agrees to the filing of a new lien in order to clear the title to the property.

CRIMINAL PROCEDURE; ALLOWANCE OF BAIL TO PERSONS
ARRESTED FOR INTOXICATION

24 November 1952

Unless persons arrested for offenses involving drunkenness or intoxication are so intoxicated that their release would immediately render them offenders again, such persons should be given an opportunity to post bail as soon as is reasonably possible.

INTOXICATING LIQUORS; BEER; POSSESSION IN DRY COUNTIES;
CONFISCATION

24 November 1952

Beer is included in the definition of liquor or intoxicating liquor as set out in G. S. 18-1(1). G. S. 18-6 provides for confiscation of illegal liquor stipulating that taxpaid liquor shall within ten days be turned over to the Board of County Commissioners, which shall within ninety days from the receipt thereof turn it over to hospitals for medicinal purposes or sell it to legalized alcoholic beverage control stores within the State; the proceeds of such sale being placed in the school fund, or the liquor may be destroyed. The Turlington Act, Article 1, Chapter 18 of the General Statutes, as modified by the general provisions of the Alcoholic Beverage Control Act, is still in full force and effect. *STATE v. BARNHARDT*, 230 N. C. 223; *STATE v. WILSON*, 227 N. C. 43 and *STATE v. CARPENTER*, 215 N. C. 635.

SCHOOLS; SUPPLEMENTAL BUDGET; TRANSFER OF FUNDS

25 November 1952

While G. S. 153-124 provides that in making the tax levy the County Commissioners shall take into consideration surplus revenues and unencumbered balances carried over from the preceding fiscal year, it is

thought that when there is a surplus at the beginning of any fiscal year which was not appropriated, as required by said statute, the appropriation resolution may be amended to appropriate that surplus at a later date. Ordinarily these surplus funds may be appropriated either for a new purpose or added to the appropriation for an original purpose. It is also thought that this rule applies to surplus carried over from the Debt Service Fund unless there is an express contract with the bondholders dedicating these funds to Debt Service and no other purpose or unless there is a public-local statute providing that such funds can be used for debt service only. Buncombe County has such statute—Chapter 4, Public-Local Laws of 1937.

**MOTOR VEHICLES; DRIVER'S LICENSE; DRIVING WHILE LICENSE REVOKED;
EFFECT OF CONVICTION OF OPERATING WITHOUT LICENSE**

26 November 1952

When an operator is convicted of operating a motor vehicle without a driver's license and the departmental records show that the license was in a state of suspension or revocation at the time, the Department must add the mandatory extended period provided in G. S. 20-28.

INTOXICATING LIQUORS; ABC EMPLOYEES; BLANKET BOND

26 November 1952

G. S. 18-45(n) expressly requires the manager of a county ABC store to make a bond for the faithful performance of his duties in such sum as may be fixed by the county board with sufficient corporate surety approved by the board. It is thought that it is sufficient compliance with this statute to have all the employees including the store managers covered by a blanket bond. Other employees are not required by statute to make bond, but to make such a requirement is simply additional protection.

**COUNTY COMMISSIONERS; FILLING OF VACANCY PRIOR
TO BEGINNING OF TERM**

26 November 1952

G. S. 153-6 may authorize a clerk of the Superior court to fill a vacancy in the membership of the board of county commissioners by resignation of a member before his term begins, but it is recommended that, when possible, the members elected should be inducted and thereafter resign, if he desires to do so, so there would be no question as to filling the vacancy.

COUNTIES; LIABILITY FOR MEDICAL SERVICES; INDIGENTS

26 November 1952

A county is liable for the medical treatment of an indigent to the extent in which the county obligates itself. Where an indigent has property,

the county may reimburse itself out of such indigent's property by a special proceeding before the clerk.

BANKS AND BANKING; CREDIT UNIONS; AUTHORITY TO PAY TO THE
SURVIVOR; FUNDS HELD IN A JOINT ACCOUNT

28 November 1952

Under G. S. 53-146 when a deposit is made in a credit union in the names of two persons payable to either or the survivor, the credit union is justified in paying out the deposit to the survivor even though it knows that the other depositor is dead provided a sufficient release of the funds has been received from the Commissioner of Revenue under G. S. 105-24. The statute, G. S. 53-146, is for the protection of the bank or credit union and does not control the matter of the ultimate ownership of the funds. TAYLOR v. SMITH, 116 N. C. 531; JONES v. FULLBRIGHT, 197 N. C. 274; REDMOND v. FARTHING, 217 N. C. 678; JONES v. WALDROP, 217 N. C. 178; NANNIE v. POLLARD, 205 N. C. 362 and THOMAS v. HOUSTON, 181 N. C. 91.

SCHOOLS; AUTHORITY OF COUNTY BOARD OF EDUCATION TO CREATE
INDEBTEDNESS FOR AN ERECTION OF A JANITOR'S HOME

28 November 1952

Construing together G. S. 115-45, 115-84 and 115-157(b), it is to be doubted that a county board of education has authority to enter into a binding contract for the payment by the month of the cost of construction of a janitor's home on the school grounds; the home to become a part of the school property upon completion of the monthly payments. Such a contract would probably be construed as a mortgage. Our Supreme Court has held that G. S. 153-9(14) authorizing counties to sell real property does not empower them to encumber such property by mortgage. THREADGILL v. COMMISSIONERS, 99 N. C. 352; VAUGHN v. COMMISSIONERS, 118 N. C. 636.

ADMINISTRATION; STATE TAXES; PRIORITY OF LIEN; UNRECORDED CHATTEL
MORTGAGE OR CONDITIONAL SALE CONTRACT

1 December 1952

The State's lien for taxes with respect to property which has been levied upon takes priority over an unrecorded chattel mortgage.

SCHOOLS; REFUNDING BONDS; APPORTIONMENT BETWEEN CITY
AND COUNTY UNITS

1 December 1952

G. S. 115-363 provides that all county-wide debt service funds shall be apportioned to county and city administrative units in the same manner as

are county-wide current expense school funds, that is accorded to per capita enrollment, subject to the provision that no administrative unit shall receive more than its actual needs including sinking fund requirements. This statute contains the proviso that the debt service apportionment between county and city administrative units shall apply only to debt service for capital outlay obligations incurred prior to July 1, 1937 except in those counties where special legislation has been enacted providing for the issuance of school building bonds in behalf of special bond tax units (such as Chapter 279, Public-Local Laws of 1937 applicable to Buncombe County). This statute further provides that the last proviso shall not apply to refunding bonds.

SCHOOLS; STATE BOARD OF EDUCATION; POWER OF BOARD TO ADOPT
REGULATIONS AS TO PARTICIPATION OF LOCAL SCHOOLS IN
INTERSCHOLASTIC SPORTS; REASONABLENESS OF
REGULATIONS

1 December 1952

From what was said by our Supreme Court in the case of *COGGINS v. BOARD OF EDUCATION*, 223 N. C. 763, it would seem that Rule 16 of the regulations governing athletics in public schools of North Carolina adopted by the State Board of Education and to become effective on July 1, 1952, is a valid exercise of the discretion vested in the State Board of Education. This regulation provides:

"Practice in any sport may not start before August 15th or two weeks prior to the regular term 'opening of schools'". North Carolina Constitution, Article IX, Section 9; G. S. 115-31.2(7); G. S. 115-25.

RALEIGH-DURHAM AIRPORT AUTHORITY; DUTY OF BOARD TO REQUIRE
BOND TO SECURE FUNDS IN DEPOSITORIES

1 December 1952

The Raleigh-Durham Airport Authority should require bonds to be executed to secure the safekeeping of the funds held in depositories for said Authority and the cities and counties in whose behalf the Authority is operated.

CRIMINAL LAW; LARCENY; BAILEE

1 December 1952

When the owner gives possession of an automobile to a person, and such person drives the car beyond the point agreed upon, does not return the car at the time agreed upon and wrecks the car, such person having received the car with the owner's consent and there being no evidence that he intended ultimately to deprive the owner of the complete use and possession of the car, that is, there is no evidence that the person charged intended to never return the car to the owner, it is doubtful if any criminal offense has been committed.

MOTOR VEHICLES; MISCELLANEOUS; PRIVILEGES AND EMOLUMENTS;
CASH DEPOSITS IN LIEU OF SURETY BOND

2 December 1952

When a statute requires taxicab operators to furnish insurance policies for the protection of anyone who may be injured by the operation of the taxicabs, a cash deposit is sufficient compliance with the statute, in view of *STATE v. SASSEEN*, 206 N. C. 644.

ARCHITECT; PRACTICE OF ARCHITECTURE; ENGINEERING; PRACTICE OF PROFESSIONAL ENGINEERING; PLANNING AND DESIGNING OF CHURCHES, BUSINESS OR PROFESSIONAL OFFICES, HOTELS, TOURIST COURTS, STORE BUILDINGS

3 December 1952

The designing, planning and supervision of churches, business or professional offices, hotels, tourist courts and store buildings belongs to the field of architecture, and professional engineers who design such buildings which are not related to engineering objectives are violating the statutes regulating the practice of the profession of architecture.

CRIMINAL LAW; BAIL; BAIL FURNISHED FOR APPEARANCE IN RECORDER'S COURT CONTINUING AS BAIL FOR SUPERIOR COURT

4 December 1952

An appearance bond executed for the appearance of the defendant in the Recorder's Court cannot be legally used by the defendant as a bond to insure his appearance in the Superior Court where the defendant is bound over from the Recorder's Court to the Superior Court.

RECORDERS' COURTS; CRAVEN COUNTY RECORDER'S COURT:
EFFECT OF *STATE v. THOMAS* ON

4 December 1952

The opinion in *STATE v. THOMAS*, declaring a statute providing for appeals from the Greene County Recorder's Court to the Superior Court unconstitutional, would not appear to require the same construction upon Chapter 115 of the Public Laws of 1929 applicable to Craven County.

TEACHERS' AND STATE EMPLOYEES' REQUIREMENT SYSTEM;
COMPULSORY RETIREMENT

4 December 1952

The Board of Directors of the School for the Deaf at Morganton has the authority to adopt a policy that no request shall be made for the purpose of retaining in employment any person employed by the Board who reaches their sixty-fifth birthday and that such person shall be compelled to retire.

MUNICIPALITIES; AUTHORITY TO MAKE APPROPRIATION FOR COMMUNITY
BUILDING; POWER TO APPOINT MAYOR PRO TEM

4 December 1952

It is doubtful that a municipality has the authority under G. S. 160-155 and succeeding sections to make a cash donation to a non-profit corporation for the purpose of operating a community building. It is noted that in the case of several cities in North Carolina, special legislation has been enacted authorizing a city to own and operate a city auditorium. Chapter 43, Private Laws of 1909 (Asheville); Chapter 80, Private Laws of 1931 (Raleigh).

The Charter of the Town of Stantonsburg, Chapter 173, Private Laws of 1909, as amended by Chapter 1061, Session Laws of 1945, provides that the mayor of that town shall have the powers set out in Chapter 73 of the revisal of 1905, now Chapter 160 of the General Statutes. Under G. S. 160-10, it is thought that the commissioners of the Town of Stantonsburg have the authority, to fill a vacancy in the office of mayor by appointment for the unexpired term, and that, under G. S. 160-12, the Board has the authority to designate one of its own members as mayor pro-tempore and to exercise all the powers and to perform all the duties of the mayor during the absence or illness of the mayor. This will include the powers and duties of the mayor as an inferior court under G. S. 160-13 and G. S. 160-14.

COUNTY COMMISSIONERS; AUTHORITY TO CONTRIBUTE TO CIVIL AIR PATROL

4 December 1952

The question as to whether or not the governing body of a county has authority to make contributions to the Civil Air Patrol depends upon whether or not such organization comes within the meaning of "local organizations of official State and Federal governmental agencies engaged in the war effort, including Defense Councils and Office of Price Administration."

SCHOOLS; ACQUISITION OF SITES; LIMITATION UPON POWER TO CONDEMN

4 December 1952

It is to be doubted if a city or county board of education has the power to condemn land for a school building site when no immediate plans for construction of the building are contemplated. G. S. 115-85; BOARD OF EDUCATION v. PEGRAM, 197 N. C. 33; BOARD OF EDUCATION v. FORREST, 190 N. C. 753.

MOTOR VEHICLES; EQUIPMENT AND CONSTRUCTION; RULES OF THE ROAD;
USE OF MECHANICAL TURN SIGNALS

5 December 1952

Electrical signal devices which have been approved by the Department of Motor Vehicles are valid turn indicators.

MOTOR VEHICLES; RULES OF THE ROAD; NECESSITY FOR DISPLAYING
LIGHTS WHEN PARKING ON HIGHWAY

5 December 1952

When cars are parked on a highway during the night, red lights must be displayed from the rear, absent a municipal ordinance abolishing the requirement, as provided in G. S. 20-134.

LICENSE TAXES; MARBLE YARDS; NECESSITY FOR LICENSE TO
TO SOLICIT; SECTION 160

5 December 1952

Monument companies must obtain privilege licenses for their operations and a license for each solicitor or salesman.

(1) SCHOOLS; ACQUISITION OF SITES; LIMITATION UPON
POWERS TO CONDEMN

(2) COUNTY COMMISSIONERS; USE OF GENERAL FUND SURPLUS

5 December 1952

Under G. S. 115-85, it is thought that a city administrative unit is authorized to condemn land for a school site when such property can be purchased at a reasonable price. Such condemnation proceedings are instituted before the Clerk of the Superior Court in the name of the county superintendent of schools in the case of a county administrative unit, and in the name of the superintendent of city schools in the case of a city administrative unit. BOARD OF EDUCATION v. PEGRAM, 197 N. C. 33; BOARD OF EDUCATION v. FORREST, 190 N. C. 753.

By supplemental budget, it is thought that county commissioners are authorized to appropriate funds from an unencumbered and unappropriated general fund surplus for the purpose of acquiring sites for school buildings. G. S. 115-83; Constitution of North Carolina, Article IX, Section 3.

CRIMINAL PROCEDURE; FORFEITURE OF BAIL BOND; DUTIES OF THE COURT

5 December 1952

It would seem that the procedure for forfeiting of bail bond in the Trial Justice's Court of the Town of Tarboro, created under the provisions of Chapter 126, Private Laws of 1935, is governed by the procedure outlined in G. S. 15-119, 15-120 and 15-121, in view of the provisions of G. S. 160-13.

MUNICIPAL CORPORATIONS; LOCAL GOVERNMENTAL EMPLOYEES'
RETIREMENT SYSTEM; ORDINANCES

8 December 1952

In the absence of a public-local act authorizing the same, a municipal corporation may not set up a retirement system for municipal firemen.

TOWNSHIP CONSTABLES; RESIDENCE REQUIREMENTS

8 December 1952

Under G. S. 151-6, if a township constable removes himself from the township in which he was elected, he automatically vacates his office.

MUNICIPALITIES; WATER FACILITIES; INSTALLATION BY PRIVATE
INDIVIDUAL; PUBLIC CONTRACTS

8 December 1952

A municipality may not enter into a contract which provides that the city will pay to a private individual the actual construction cost of water facilities by giving credit to the individual on his water bill.

FARM CENSUS SURVEYS; COUNTIES AND COUNTY COMMISSIONERS; DUTY OF
COUNTY COMMISSIONERS TO PROVIDE FOR SURVEYS

9 December 1952

The provisions of G. S. 106-24, G. S. 106-25 and G. S. 106-26 are mandatory, and the several boards of county commissioners are required under these statutes to provide for the collection and compiling of the information to be incorporated into the farm census surveys provided for in the Act.

ALCOHOLIC BEVERAGES; CLOSING OF ABC STORES ON ELECTION DAY

10 December 1952

All ABC Stores are required to be closed on all election days, including bond elections, where the election is to be held in the district or political subdivision where such stores are operated.

ASSISTANT OR DEPUTY REGISTER OF DEEDS; RESIDENCE REQUIREMENTS

10 December 1952

A deputy or assistant register of deeds is a public officer and in order to legally hold such office, he must be a resident of the county which he serves.

SALE OF MUNICIPAL PROPERTY ACQUIRED FOR PUBLIC PURPOSE;
MUNICIPAL AIRPORT PROPERTY

10 December 1952

Property owned by a municipality and devoted to a public purpose may not be sold except under authority of a special Act of the Legislature granting the authority to do so.

LOTTERY LAWS; BINGO

11 December 1952

The game of bingo is considered a lottery under the gambling and lottery laws of this State, and it may not be legally played even though the proceeds from the playing of the game are donated to charity.

MUNICIPAL CORPORATIONS; ADOPTION OF PLAN "D" FORM OF GOVERNMENT;
EFFECT ON THE SPECIAL ACT TO PROVIDE A PERMANENT UTILITIES
COMMISSION FOR THE CITY OF GREENVILLE

11 December 1952

The "Greenville Utilities Commission" would not be abolished by the adoption of Plan "D" form of government, but its functions would be modified to the extent that the City Manager would have the authority granted by G. S. 160-349, 350, 351. The "Greenville Utilities Commission" would continue to exercise the other functions and duties prescribed by the Acts of the Legislature under which it operates.

MUNICIPAL CORPORATIONS; APPROPRIATION OF FUNDS TO PAY UNPAID
ASSESSMENTS OF VOLUNTEER FIREMEN IN THE FIREMEN'S
FRATERNAL INSURANCE FUND

12 December 1952

There is no authority for a municipality to appropriate public funds to pay the unpaid assessment of a member of a volunteer fire department. The local board of trustees of the Firemen's Relief Fund may pay such unpaid assessments of volunteer firemen who are unable to do so by reason of disability.

MUNICIPAL CORPORATIONS; APPROPRIATIONS TO
VETERANS' RECREATION AUTHORITY

12 December 1952

Municipalities may not make appropriations to Veterans' Recreational Authorities. However, they may make gifts of real and tangible personal property to such Authorities.

COUNTIES; RIGHT OF COUNTY TO PAY ATTORNEY'S FEE OF
SHERIFF IN A SUIT AGAINST HIM

15 December 1952

N. C. Supreme Court has not directly passed upon the question whether a county has the legal right to pay the attorney's fee of the Sheriff in a suit against him in which one of his deputies and a constable assisting him, were charged with the use of unnecessary force. *ROPER v. LAURINBURG*, 90 N. C. 427, is an analogous case.

TAXES; PLACE FOR LISTING PERSONAL PROPERTY AND POLL

15 December 1952

G. S. 105-302 provides that for the purpose of this section, the residence of the person who has two or more places in which he occasionally dwells, shall be the place at which he resided for the longest period of time during the year preceding the date as of which property is assessed, with the proviso that household and kitchen furniture and other tangible property kept or used in connection with any temporary or seasonal residence, shall be listed in the county in which such real estate is located.

In spite of the foregoing language, it is thought that a person who is domiciled in a certain county in North Carolina and dwells there during his summer vacations, and attends college for a part of the year in another county in North Carolina, resides for purposes of listing his personal property and paying poll tax in the county of his domicile and not in the county in which the college is located. *RANSOM v. COMMISSIONERS*, 194 N. C. 237; *ROANOKE RAPIDS v. PATTERSON*, 184 N. C. 135 and *HORNE v. HORNE*, 31 N. C. 99.

AD VALOREM TAXATION; PLACE OF LISTING WHEN BUSINESS PROPERTY
AND REAL PROPERTY LOCATED IN SAME TOWNSHIP

16 December 1952

Personal property kept and used in a particular county in connection with the operation of a mercantile establishment is subject to ad valorem taxation in such county even though that is not the county of the residence of the owner.

AD VALOREM TAXATION; EXEMPTIONS; BUILDINGS OWNED BY CITY AND
RENTED AS A SHIRT FACTORY; STOCK AND FIXTURES OF ABC STORE

16 December 1952

A building owned by a city and leased to a manufacturing company is subject to county ad valorem taxation.

AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY;
GARDEN CLUB PROPERTY

16 December 1952

Land owned by a garden club which land has been developed for the conservation of wild life and the protection of water sheds, and with respect to which an admission charge is made, is not exempt from ad valorem taxation in the absence of other circumstances such as compliance with the provisions of G. S. 55-11, relating to certain public parks.

DEEDS; REPUGNANCY BETWEEN GRANTING CLAUSE AND
CONDITIONS SUBSEQUENT

16 December 1952

Where conditions subsequent in a deed are repugnant to the granting clause and habendum, the warranty being in harmony therewith, the conditions subsequent will be rejected. *KENNEDY v. KENNEDY*, 236 N. C. 419; *ARTIS v. ARTIS*, 228 N. C. 754.

MUNICIPALITIES; BONDS; MUNICIPAL BUILDING FOR CITY JAIL,
POLICE STATION, COURTROOM AND ADDITIONAL SPACE

16 December 1952

There is abundant legal authority for the Town of Southern Pines, subject to a referendum vote of the people to create an indebtedness for the purpose of constructing a municipal building to house the jail, the police station and the city court. G. S. 160-1, 160-200(13), 160-62, 160-409, 150-77(b). Constitution of North Carolina, Article VII, Section 7, Article V, Section 4.

What is a necessary expense for a municipality is a matter of law to be decided by the courts. Whether a particular building is a necessity is a matter of fact to be determined by the governing body in its sound discretion. *HIGHTOWER v. RALEIGH*, 150 N. C. 569.

Under the Hightower case it would seem that a municipality has the right to plan its municipal buildings for the foreseeable future. Therefore, it would seem that the governing body in its sound discretion may build a building with space not needed for the next few years but which can be rented to the county and produce an income.

GASOLINE TAX; EXEMPTIONS; CITY SCHOOL ADMINISTRATIVE UNITS

16 December 1952

City school administrative units are not exempted as such from the payment of the State gasoline tax on purchases of gasoline for school use. Of course, a city school administrative unit may, as in the case of any other taxpayer, under the provisions of G. S. 105-446, secure a refund for a portion of the tax when the gasoline purchased is used for purposes other than the operation of motor vehicles on the highways of the State.

COUNTIES; MUNICIPALITIES; ELECTRICAL INSPECTION

16 December 1952

Construing together G. S. 160-141, 160-121 and 160-122, it would seem that incorporated cities and towns are required to appoint an electrical inspector while it is discretionary with the counties.

COURTS; JUSTICES OF THE PEACE; REMOVALS FROM

16 December 1952

Cases may be removed from Justices of the Peace to General County Courts under Subsection 4 of G. S. 7-278.

SCHOOLS; ASSUMPTION OF BONDS BY COUNTY; ABOLITION OF SCHOOL DISTRICTS; AUTHORITY TO LEVY SPECIAL SUPPLEMENTAL TAX

17 December 1952

Construing together G. S. 115-158, 115-352, 115-235, 115-185, 115-186, it is thought that a school district existing prior to May 15th 1933 and having authority to levy a tax for debt service and also a supplemental tax for school maintenance, no longer has the authority to levy a special tax for maintenance purposes unless it complies with the provisions of G. S. 115-361 and G. S. 115-362.

SCHOOLS; SUPPLEMENTING SALARIES OF PRINCIPALS AND HIGH SCHOOL ATHLETIC COACHES

17 December 1952

Construing together G. S. 115-356-361-362 and 363, it would seem that a county board of education may submit to the board of county commissioners and the State Board of Education a supplemental budget to supplement the salaries of principals and teachers who serve as athletic coaches by giving them an allowance to cover traveling expenses.

SCHOOLS; COUNTY TREASURER; EX-OFFICIO TREASURER OF COUNTY SCHOOL FUNDS; FISCAL AGENT

17 December 1952

Construing together G. S. 155-3, 155-5 and 155-165, it would seem that when the Board of Commissioners of Onslow County has designated two banks as fiscal agents for the county, the Board of Commissioners and not the County Board of Education has the authority to stipulate that school funds be deposited in a particular one of the two banks designated as the fiscal agents of the county.

INTOXICATING LIQUOR; TRANSPORTATION OF EXACTLY ONE GALLON IN DRY COUNTY; TRANSPORTATION OF EXACTLY ONE GALLON IN DRY COUNTY WITH ADDITIONAL LIQUOR FOUND IN HOME

17 December 1952

A person living in nonconforming territory may lawfully transport, in sealed container, to his own private dwelling for family uses, not in excess of one gallon of tax-paid liquor, provided it is acquired from an ABC

Store in this State. Such transportation raises no presumption against him, and G. S. 18-49 does not require the defendant to prove that the transportation was not for purpose of sale.

If, however, at the time of the transportation, the defendant has more liquor at his home, he would be in possession of more than one gallon of tax-paid liquor and would, therefore, be in violation of G. S. 18-11 and 18-32.

DOUBLE OFFICE HOLDING; MEMBER OF BOARD OF COUNTY COMMISSIONERS
AND MEMBER OF STATE BOARD OF AGRICULTURE

17 December 1952

The office of county commissioner and that of being a member of the State Board of Agriculture are both public offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

CIVIL PROCEDURE; INFANTS; SPECIAL PROCEEDINGS;
CONSTRUCTION OF G. S. 1-65

18 December 1952

Under the language of G. S. 1-65, it is doubtful that judgment may be entered against an infant defendant until after twenty days notice of the summons and complaint and after answer has been filed by the guardian ad litem. *MOORE v. GIDNEY*, 75 N. C. 34; *GRAHAM v. FLOYD*, 214 N. C. 77; *SIMMS v. SAMPSON*, 221 N. C. 379. Under the decision in *FINGER v. SMITH*, 191 N. C. 818, it would seem that a judgment entered against an infant before twenty days have elapsed after service of summons and copy of the petition is at least irregular and should be set aside.

CRIMINAL PROCEDURE; COURT COSTS; FEES TO SHERIFF

18 December 1952

Under paragraph 9 of G. S. 162-6, it would seem that the Sheriff is entitled to the costs of travel in all cases coming under that paragraph, not only in those cases in which the costs are paid by the County.

MUNICIPALITIES; AUTHORITY TO ISSUE BONDS; AUTHORITY TO BORROW IN
ANTICIPATION OF PAYMENTS UNDER THE POWELL BILL

18 December 1952

Under Article VII, Section 7, Article V, Section 4, of the State Constitution, a municipality may issue bonds for street paving purposes without a vote of the people but only to the extent of two-thirds of the amount to which the indebtedness of the municipality was reduced during the next preceding fiscal year. *BROWN v. HILLSBORO*, 185 N. C. 368, *HENDER-*

SONVILLE v. JORDAN, 150 N. C. 35.

There seems to be no authority for a municipality to create an indebtedness to be repaid solely from Powell Bill funds or other non-tax revenues.

LICENSE TAXES; MUNICIPAL CORPORATIONS; PENALTIES;
SEPARATE PLACES OF BUSINESSES

18 December 1952

It is true as a general proposition that a license tax may be imposed with respect to each separate business location. The mere fact that there is no door permitting direct access from one place of business to an adjoining room does not of itself necessarily mean that there are two separate places of business. In all cases, it is a question of fact whether the method of operating constitutes maintaining a single place of business or more than one place of business.

INCOME TAX; CHANGE BY FEDERAL AGENT; STATUTE OF LIMITATIONS

19 December 1952

When a change is made in a Federal income tax assessment by a proper officer of the Federal Government and the same is reported by a Federal officer to the Commissioner of Revenue, and the taxpayer fails to report such change, the Commissioner may reopen the case and, if the facts justify such action, make an additional assessment at any time within five years from the time the Commissioner receives such Federal report.

FIREMEN'S RELIEF FUND; MUNICIPAL CORPORATIONS; AUTHORITY
OF MUNICIPALITY TO INSURE MEMBERS OF VOLUNTEER
FIRE DEPARTMENT

19 December 1952

Trustees of a firemen's relief fund may not provide for the payment of a fireman's assessment in the Firemen's Fraternal Insurance Fund unless such fireman is unable to pay said assessment by reason of disability. See G. S. 118-7.

Under G. S. 160-200(25), the governing board of a town is authorized to insure its policemen, firemen, or other class of city employees against death or disability, or both, during the term of their employment under forms of insurance known as group insurance. The amount of benefit on the life of any one person is limited to the sum of Two Thousand Dollars (\$2,000.00). Premiums on such insurance are payable out of current funds of a municipality.

SUSPENDED SENTENCE; INVOCATION OF

19 December 1952

Whether a deviation from one of the terms of a suspended sentence constitutes a breach of the entire sentence is a matter for the determination of the Court.

DIVORCE; INSANE SPOUSE CONFINED IN OUT-OF-STATE MENTAL INSTITUTION;

(1) APPLICATION OF G. S. 50-5(6) TO OUT-OF-STATE INSTITUTIONS;

(2) PROCEDURE IN SERVICE OF PROCESS

19 December 1952

(1) G. S. 50-5(6) is applicable where the spouse has been confined for the required length of time in a mental institution outside the State of North Carolina.

(2) If a regular guardian is appointed, service of process upon the superintendent is not necessary.

If a guardian ad litem is appointed, substituted service may be had on the superintendent under G. S. 1-104.

SEARCH WARRANTS; VALIDITY OF SEARCH OF HOME WITHOUT WARRANT

22 December 1952

Evidence obtained without the use of a search warrant or warrant of arrest cannot be admitted in evidence in the trial of any action.

FINES AND FORFEITURES; PAYMENT INTO THE SCHOOL FUND;
MUNICIPAL ORDINANCES

22 December 1952

The clear proceeds of all fines and forfeitures are required to be paid into the school fund of the county where such fines and forfeitures arise. This is true regardless of whether such fines and forfeitures arise out of a criminal action for a violation of a town ordinance or any criminal statute. This is clearly set forth in the opinion in the case of BOARD OF EDUCATION v. HENDERSON, 126 N. C. 689, 692.

COSTS; CRIMINAL LAW; AUTHORITY OF JUDGE TO REDUCE OR REMIT COSTS

22 December 1952

Costs are not a part of the punishment in a criminal case, but are a civil liability imposed upon a defendant by operation of law in consequence of conviction. The amount of costs is fixed by statute. A judge has no discretion to reduce it, subject to the qualification that the amount of costs is a question of law which, when properly presented, may be decided as a matter of law by the judge.

Although a judge is not authorized to modify the extent of a defendant's civil liability for costs by remitting or reducing costs, he may, in suspending sentence, make payment of all or a part of the costs a condition of suspension. STATE v. CROOKS, 115 N. C. 760.

AD VALOREM TAXATION; TAX LIEN; RELEASE OF LIEN ON ONE PARCEL

22 December 1952

Tax lien on parcel of real property can be discharged by taxpayer only upon payment of all personal property, poll and dog taxes for same year pursuant to G. S. 105-376 (b).

CONTRACTORS; LICENSE; OWNER CONSTRUCTING BUILDING

22 December 1952

Carpenters employed on a salary basis by the owner of a building being constructed would not be required to secure a license as a general contractor under the terms of G. S. 87-1 et seq.

JUDGMENTS; AUTHORITY OF COURT TO SUSPEND SENTENCE ON CONDITION
THAT DEFENDANT REMAIN OUTSIDE OF COUNTY FOR TWO YEARS

22 December 1952

A judgment of banishment is void, but the time at which a sentence shall be carried into execution forms no part of the judgment.

MOTOR VEHICLES; DRIVER'S LICENSE; DRIVING ROAD
GRADER AFTER LICENSE REVOKED

23 December 1952

One who drives a road grader during the period of revocation of his license is not guilty of driving while his license is revoked.

STATE BONDS OF THE YEARS 1868 AND 1869

23 December 1952

A State bond issued under authority of the ordinance of March 11th 1868 is without value because of the 1879 amendment to Article I, Section 6, of the North Carolina Constitution. North Carolina Constitutional Convention Journal, page 393. *BALTZER v. THE STATE*, 104 N. C. 265; *BALTZER v. NORTH CAROLINA*, 161 U. S. 240.

BEER AND WINE; AUTHORITY TO CALL ELECTION IN MUNICIPALITY

29 December 1952

Construing together G. S. 18-124(d), 18-127 and 160-3, it is doubtful that the mayor of a municipality has the authority to release petitions for a beer and wine election under G. S. 18-127, without official action of the governing body of the municipality.

MOTOR VEHICLES; RULES OF THE ROAD; VALIDITY OF "WHAMMY"

29 December 1952

Evidence obtained from the "whammy" is admissible and the question of regular inspections would bear only on the credibility of the evidence.

COUNTY COMMISSIONERS; AUTHORITY TO MAKE DONATIONS TO
ASHEVILLE ORTHOPEDIC HOSPITAL

29 December 1952

G. S. 153-152 provides that the Board of County Commissioners of each county not exempt therefrom may provide, by taxation, for the maintenance of the poor and do everything expedient for their comfort and well-being. Under this section, county commissioners may pay for injured cases on a basis of services performed in each case.

AD VALOREM TAXATION; PERSONAL PROPERTY; TAX SITUS; PROPERTY
PERMANENTLY LOCATED OUTSIDE THE STATE

31 December 1952

Tangible personal property owned by a North Carolina resident is not subject to ad valorem taxation in this State when such property is permanently located outside of the State.

AD VALOREM TAXATION; PERSONAL PROPERTY;
EXEMPTIONS, BENEVOLENT SOCIETIES

31 December 1952

The furniture, furnishings and other personal property belonging to a benevolent organization are exempt from ad valorem taxation when such property is used wholly for lodge purposes and meeting rooms by such organization.

CONSTABLES; JURISDICTION

31 December 1952

A constable has the authority to make an arrest anywhere in the county in which he is appointed or elected. See STATE v. CORPENING, 207 N.C. 805.

PHARMACY; ELIGIBILITY OF PERSONS TO TAKE THE PHARMACY EXAMINATION

2 January 1953

A licensed physician is not a licensed pharmacist within the meaning of G. S. 90-61, which provides that a person who has had two years of college training and has been filling prescriptions in a drug store for

twenty years or longer may take the pharmacy examination. The instruction referred to must be taken under a licensed pharmacist before a person may be permitted to take the examination to practice pharmacy in North Carolina.

ILLEGAL PRACTICE OF LAW; REAL ESTATE DEALER DRAWING DEEDS

2 January 1953

It is unlawful for a real estate dealer or broker who is not a licensed attorney to prepare deeds to real property.

SALE OF LANDS BY THE STATE; EMPLOYMENT OF REAL ESTATE AGENT, ETC.

5 January 1953

A State institution may employ a real estate agent for the purpose of obtaining responsible bidders for property which it desires to be sold and pay a commission to such agent for such services. *MORTGAGE CO. v. WINSTON-SALEM*, 216 N. C. 726.

(1) TRANSFER OF CASES FROM SUPERIOR COURT TO RECORDER'S COURT WHICH WAS ESTABLISHED SUBSEQUENT TO DOCKETING OF CASES

(2) BILLS OF COST IN SUPERIOR COURT

5 January 1953

The fees authorized by G. S. 6-12 do not apply to Recorders' Courts. G. S. 7-225 applies to transfer of cases from Superior Court to a Recorder's Court which was established subsequent to the docketing of the cases.

CIVIL PROCESS; SERVICE ON HOLIDAYS

5 January 1953

It would appear extremely doubtful that process relating to the commencement of civil actions is valid if issued and served on a legal holiday.

HOUSING AUTHORITY; RETIREMENT OF EMPLOYEES

5 January 1953

The employees of a Housing Authority are not compelled to be covered by any retirement system in this State existing under State law and such Housing Authority, so far as State law is concerned, is authorized to cover said employees under a private plan or system of retirement.

CHAPTER 1019; SESSION LAWS OF 1951; ESTATE BY THE ENTIRETY; LAND
USED IN CONNECTION WITH ESTATE BY THE ENTIRETY;
LIEN FOR OLD AGE ASSISTANCE

5 January 1953

Under Chapter 1019 of the Session Laws of 1951, a small parcel of land adjoining the home site of a beneficiary constitutes a part of the home site and should not be levied on under execution by virtue of the Old Age Lien Law.

TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM;
STATE EMPLOYEES; EMPLOYEES OF THE COMMISSARY;
STATE HOSPITAL AT MORGANTON

5 January 1953

The employees of the commissary of the State Hospital at Morganton are eligible for coverage under the Teachers' and State Employees Retirement System.

REGISTER OF DEEDS; AUTHORITY TO OPERATE CREDIT SYSTEM
AS TO REGISTRATION FEES

6 January 1953

Under Sections 19 and 25, Chapter 114 of the Session Laws of 1951, it is doubtful that the Register of Deeds of Duplin County has authority to operate a credit system in the collection of fees.

INTOXICATING LIQUORS; POSSESSION IN DRY COUNTIES; CONFISCATION

6 January 1953

Construing together G. S. 18-6, 18-13 and 18-49, it is thought that when a person is arrested in a dry county, having in his possession two pints of tax paid whiskey, legally purchased from an ABC store in another county, and the seal on one bottle has been broken and the contents partially consumed, but the other bottle remains intact, the bottle that remains intact should be returned to the defendant upon his request.

CRIMINAL LAWS; SEARCHES AND SEIZURES; DISCOVERY OF ILLEGAL LIQUOR
WHILE SEARCHING FOR MURDER WEAPON

7 January 1953

Where a peace officer is rightfully in a home and on the premises of a man arrested for murder and is seeking to find the murder weapons, in this case a knife and axe, such search is legal, and evidence of illegal whiskey found during the search may be given in court for prosecution charging possession of the whiskey for the purpose of sale.

MUNICIPAL CORPORATIONS; LICENSE TAXES; SALE OF JEWELRY;
WHAT CONSTITUTES JEWELRY

9 January 1953

In my opinion, the sale of watches by a merchant constitutes the "sale of jewelry" and thereby subjects the merchant to a city privilege license tax levied on the business of selling jewelry.

MARRIAGE LAWS; AGE RESTRICTION

9 January 1953

Any two persons who are of the age of 18 years or upwards may legally be married in this State without the consent of their parents.

COUNTIES AND COUNTY COMMISSIONERS; APPROPRIATION TO COUNTY
STOCK BREEDERS' COOPERATIVE ASSOCIATION

9 January 1953

There is no authority for a board of county commissioners to make an appropriation of public funds to a county stock breeders' cooperative association.

DOUBLE OFFICE HOLDING; MEMBER ON P.M.A. BOARD
AND MEMBER ON TOWN BOARD

9 January 1953

Membership on a county P.M.A. board and membership on a town board would be considered double office holding within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

MOTOR VEHICLES; ARREST OF MILITARY PERSONNEL

12 January 1953

Military personnel driving military vehicles upon the highways of the State in the course of their duties are not immune to arrest for violation of traffic regulations.

DOUBLE OFFICE HOLDING; TOWN CLERK AND ASSISTANT RECORDER

12 January 1953

The office of town clerk and that of assistant recorder of a recorder's court are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

SCHOOLS; AUTHORITY OF LOCAL SCHOOL COMMITTEE TO EXPEND NON-TAX
FUNDS FOR REPAIR OF BUILDING, A PORTION OF WHICH WILL BE RENTED
TO THE PUBLIC AND A PORTION WILL BE RENTED TO TEACHERS

12 January 1953

G. S. 115-84 and G. S. 115-157(b) expressly authorize county and city administrative units to include in their budget funds for dormitories and homes for teachers. G. S. 115-361 and 115-362 limit the purposes for which tax funds levied as a local supplement may be used. However, it is thought that a local school committee may in its discretion use non-tax funds to repair a building owned by the County Board of Education, a portion of which will be rented to the public and a portion of which will be rented to school teachers, in the case in which the County Board of Education allows the local committee to use the rents for local school purposes.

SCHOOLS; STATE BOARD OF EDUCATION; CONTRACT FOR TEXTBOOKS

12 January 1953

It is thought that the last sentence in G. S. 115-62 applies to elementary textbooks only. Therefore, it would not seem objectionable for the State to enter into a contract with the Publisher of Shorthand books to purchase said books under a supplementary contract until May 31, 1955 and then under a basal contract after that date.

INSURANCE; INCOMPETENT BENEFICIARY; FACILITY OF PAYMENT CLAUSE

12 January 1953

Under G. S. 58-206, it is thought that the beneficiary of a policy of insurance is entitled to the proceeds even against the person paying the premiums on the policy and advancing the money for the funeral expenses for the insured. This would be otherwise in case there is a facility of payment clause in the contract. In that case the insurance company would be justified in reimbursing a person who advanced money for the funeral expenses of the insured.

JUDGMENTS; EXECUTIONS; FINES AND FORFEITURES; COUNTY COMMISSIONERS

12 January 1953

Construing together G. S. 1-305, 138-2 and 115-382, it is thought that if the Board of County Commissioners adopt a resolution requesting the Clerk of the Superior Court to issue executions on final judgments for bond forfeitures upon application of the County Attorney, it will be the duty of the Clerk to issue the executions without the payment of his fees in advance.

COUNTIES; AUTHORITY OF COUNTY COMMISSIONERS TO PAY PREMIUMS ON
BLANKET BOND FOR EMPLOYEES OTHER THAN DEPARTMENT HEADS

12 January 1953

Construing together G. S. 109-3, 109-4, 153-19(11) and 153-1, it is doubtful that the County Commissioners have authority to pay the premium on a bond for employees other than departmental heads.

AD VALOREM TAXATION; POSTPONEMENT OF PAYMENT

12 January 1953

A Board of County Commissioners is without authority to postpone the payment of taxes of a taxpayer.

CASWELL TRAINING SCHOOL; RESIDENCE REQUIREMENTS OF APPLICANTS FOR
ADMISSION; LEGAL SETTLEMENTS; SETTLEMENT OF LEGITIMATE CHILDREN

12 January 1953

A minor child, the parents of whom have not acquired a settlement in this or in any other State, who has lived continuously in this State from the time of its birth for a period of approximately seven years with its grandparents, has acquired a settlement of its own in this State for the purpose of admission to Caswell Training School. The grandparent with whom the child resides should be appointed as guardian under G. S. 116-130.

MAYOR, TOWN COMMISSIONERS; AUTHORITY OF COMMISSIONERS
TO SET SALARIES

13 January 1953

The town commissioners of the Town of Ayden have the authority to set the salary of the Mayor; but do not appear to have the authority to set their own salaries.

AD VALOREM TAXATION; MUNICIPAL CORPORATIONS; ENLARGEMENT OF
CORPORATE LIMITS; WHEN NEW AREA SUBJECT TO TAX

13 January 1953

G. S. 160-445 provides that when the corporate limits of a city or town are enlarged the newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the date of annexation. Since the fiscal year of a city begins on July 1st, it follows that if new territory was annexed in May, 1952, such new territory would be subject to ad valorem taxes becoming due the following October 1st.

NORTH CAROLINA STATE EXAMINING COMMITTEE OF PHYSICAL THERAPISTS;
USE OF SEAL; DISPOSITION OF FUNDS COLLECTED BY THE COMMITTEE

13 January 1953

The North Carolina State Examining Committee of Physical Therapists may, by the adoption of a resolution, adopt a seal to be used by said Committee in authenticating its official certificates and other paper writings. There is no requirement that the Committee make any report of its financial condition to any State agency. The Act requires only that all funds collected be expended for the purpose of holding examinations and defraying other expense of the Committee in connection with its business.

SALES TAX; EXEMPTIONS; BUILDING MATERIALS USED IN CONSTRUCTION
WORK FOR LOCAL HOUSING AUTHORITY

15 January 1953

Sales of building material to a contractor to be used in construction work for a local housing authority organized under the laws of this State are exempt from the North Carolina sales tax.

APPOINTMENT OF GUARDIAN UNDER VETERANS' GUARDIANSHIP ACT:

(1) NECESSITY OF JURY

(2) ESTATE THAT GUARDIAN CONTROLS

15 January 1953

(1) A jury trial is not necessary under the Veterans' Guardianship Act.

(2) A guardian appointed pursuant to the Veterans' Guardianship Act only has charge of funds received from the Veterans' Bureau.

MOTOR VEHICLES; RULES OF THE ROAD; ESTABLISHING SPEED
LIMITS IN SCHOOL ZONES

15 January 1953

When a school is located on a state highway, although within the town limits, only the State Highway Commission can lower the speed limit in the school area.

MOTOR VEHICLES; DEALER'S PLATES

16 January 1953

Dealer's plates may be used on motor vehicles belonging to the dealer and used by his salesmen for the purpose of calling upon prospective customers and engaging in other activities which are routine for the purpose of carrying on a general motor vehicle sales business. The dealer's

plate may also be used upon vehicles belonging to the dealer and used by his employees for the transportation of themselves, their materials and tools for the purpose of engaging in service work and repair work upon other vehicles. The dealer's plate may also be used upon vehicles belonging to the dealer and being used by the dealer or his employee for the purpose of carrying parts from the dealer's place of business to the post office or like places for shipment to the customer of the dealer.

PUBLIC HOSPITALS; USE OF PROCEEDS OF BOND ISSUE

16 January 1953

Under the very broad language contained in G. S. 131-126.23(a), it is thought that a county may use an unencumbered remainder of hospital bond funds not needed for the construction and equipment of the principal buildings, to remove an old hospital building on the property, pay for additional equipment for the hospital and build and equip a laundry for the hospital.

INTANGIBLE TAX; MOXEY ON HAND; MONEY ON DEPOSIT

16 January 1953

Money on deposit with a bank is, with certain exceptions, subject to an annual intangible property tax of 10 cents on every \$100.00. Cash or money on hand is, with certain exceptions, subject to an annual intangible property tax of 25 cents on every \$100.00.

AD VALOREM TAXATION; MEMBER OF ARMED FORCES; TAXES ACCRUING PRIOR TO ENTRY INTO ARMED FORCES

16 January 1953

A Board of County Commissioners may relieve a member of the armed forces from the payment of interest and penalties on delinquent ad valorem taxes accruing during the years while in the armed forces.

SCHOOLS; SALE OF ABANDONED SCHOOL PROPERTY

16 January 1953

Under G. S. 115-86, it is thought that upon the finding of fact by the Board of Education that the last and highest bid offered for property abandoned for school purposes is inadequate, the Board has the right to negotiate a private sale upon a finding of fact that the price offered at the private sale is adequate, provided such price is in excess of that offered at a public sale.

DOUBLE OFFICE HOLDING; VICE RECORDER OF RECORDER'S COURT AND ENROLLING CLERK FOR THE GENERAL ASSEMBLY

16 January 1953

The position of Enrolling Clerk in the General Assembly is not considered a public office within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding.

MOTOR VEHICLES; DRIVER'S LICENSE; LIMITED LICENSE

19 January 1953

One who holds a driver's license limited to driving under certain conditions and who drives under different conditions is guilty of driving without a license in violation of G. S. 20-7(a).

A.B.C. BOARDS; POWERS OF OFFICERS

19 January 1953

Under G. S. 18-46(o), it is thought that the powers of A.B.C. enforcement officers are limited to the enforcement of prohibition laws and regulations prescribed by the boards.

NOTARIES PUBLIC; TIME FOR QUALIFYING

19 January 1953

There is no provision in Chapter 10 of the General Statutes which requires a notary public to qualify within any stated period of time after his appointment by the Governor.

MEDICAL CARE; HOSPITALS; DISCOUNTS TO MEMBERS OF THE BOARD OF TRUSTEES AND EMPLOYEES OF THE HOSPITAL

19 January 1953

Where the board of county commissioners, in delegating authority to a board of trustees to operate a hospital, fixes the standards by which charges for services can be made, the board of trustees cannot give hospital services to certain groups at a discount unless authorized by the board of county commissioners.

MUNICIPAL POLICE OFFICERS; RESIDENCE REQUIREMENTS

20 January 1953

Since policemen are public officers and since there is a requirement that public officers be qualified electors in the political subdivision which they serve in such capacity, a police officer would be required to be a resident of the municipality which he serves.

AD VALOREM TAXES; REVALUATION AT LESS THAN TRUE MARKET VALUE;
TIME FOR ADOPTION OF REVALUATION

21 January 1953

G. S. 105-294 requires that, for ad valorem tax purposes, property must be valued at its true value in money.

MUNICIPAL CORPORATIONS; AUTHORITY OF THE GENERAL ASSEMBLY TO
CHANGE THE FORM OF GOVERNMENT OF MUNICIPALITIES

21 January 1953

A municipal corporation has only such powers as are granted to it by the General Assembly in its specific charter or by the general laws of the State applicable to all municipal corporations, and the powers granted in the charter will be construed together with those given under the General Statutes. This is a general statement of the law which will be found in many decisions of our Supreme Court. See *LAUGHINGHOUSE v. NEW BERN*, 232 N. C. 596, and cases cited.

MOTOR VEHICLES; DRIVERS' LICENSES; TIME WHEN FORFEITURE
OF BOND OCCURS

22 January 1953

A forfeiture of bond within the meaning of the Driver's License Act does not occur upon the call but upon the rendering of judgment declaring the forfeiture.

MOTOR VEHICLES; REGISTRATION; LICENSE PLATES; NECESSITY WHEN
TRUCK OPERATES ON FEDERAL PROPERTY

22 January 1953

Privately-owned vehicles operated solely on a Federally-owned military reservation need not procure North Carolina license plates unless they operate on highways maintained by the State of North Carolina.

DOUBLE OFFICE HOLDING; TRUSTEE OF THE UNIVERSITY OF NORTH CAROLINA

22 January 1953

Even though a trustee of the University of North Carolina is a public officer, a person holding this office is considered a commissioner of public charities and, therefore, exempt from the provisions of Article XIV, Section 7, of the Constitution, which prohibits double office holding.

MUNICIPAL CORPORATIONS; AUTHORITY FOR CLOSING STREETS

22 January 1953

The governing board of a town may effectuate the closing of a street upon the passage of a resolution to that effect. *G. S. 160-200(11)*; *SANDERS v. R. R.*, 216 N. C. 312.

MUNICIPALITIES; A.B.C. FUNDS; AUTHORITY TO CONTRIBUTE FOR
CONSTRUCTION OF SCHOOL BUILDING

23 January 1953

Under Article IX of the State Constitution and the various provisions of Chapter 115 of the General Statutes, the responsibility for the main-

tenance of the public schools, including the construction of school buildings, is upon the State, the counties and the school districts. Cities and towns as such have no responsibility for the maintenance of the public school system. Therefore, it is thought that the Town of Tryon has no legal authority to take funds from its treasury and give the same to the Tryon Administrative School Unit for the purpose of making repairs on the school building. Chapter 939, Session Laws of 1951, provides for the allocation of the net profits from ABC stores in Tryon. The General Assembly has full authority to change such allocation and to provide that a part of the net profits be paid over to the City Administrative School System.

COUNTY COMMISSIONERS; DIRECTOR OF PUBLIC TRUST CONTRACTING
FOR HIS OWN BENEFIT

23 January 1953

By G. S. 14-234 a County Commissioner is guilty of a misdemeanor if he makes a contract with the county by which he profits personally. For instance, this section will forbid a County Commissioner from making a contract by which he furnishes coal to the county. DAVIDSON v. GUILFORD COUNTY, 152 N. C. 436 and STATE v. WILLIAMS, 153 N. C. 595.

AD VALOREM TAXES; REVALUATION IN OTHER THAN QUADRENNIAL YEAR;
DEVELOPMENT OF ADJACENT PROPERTY

26 January 1953

The paving of an adjacent street and the development of certain adjacent property would not be sufficient grounds for raising the valuation for ad valorem tax purposes of certain adjacent undeveloped property under the provisions of Paragraph (d) of Subsection (3) of G. S. 105-279, which authorizes such a revaluation when the value of such property has increased since the last assessment "by virtue of some extraordinary circumstances, such circumstances being those of unusual occurrence in trade or business . . .".

MOTOR VEHICLES; REGISTRATION; FAILURE TO PROCURE PLATES

26 January 1953

One who drives a motor vehicle on the highways without proper license plates is not relieved of criminal liability by having applied for his license and having been rejected.

INSANE PERSONS AND INCOMPETENTS; COMMITMENT PROCEDURE

26 January 1953

The certification by two physicians, required by G. S. 122-46, sets the commitment procedure for insane and incompetents in motion, but the

Clerk of the Superior Court should hear all evidence on the issues and make his own independent determination.

OFFICIAL BONDS; RENEWAL; REGISTER OF DEEDS AND OTHER
COUNTY OFFICERS

27 January 1953

The official bond of the register of deeds is required to be renewed each year in the amount fixed for the bond. It is thought that in the other county offices, the bond is made for the term of office.

REGISTER OF DEEDS; OFFICIAL BOND

27 January 1953

The official bond of a register of deeds should be renewed each year, and this means multiplying the penal amount of the bond by the number of years of the term of office.

CONFEDERATE DEBT

28 January 1953

A treasury note issued under authority of Section 1, Chapter 29, Public Laws of North Carolina, Session 1862-1863, is not collectable because of the provisions of Article I, Section 6, and Article VII, Section 12 of the State Constitution, and Section 4 of the Fourteenth Amendment to the Constitution of the United States.

MUNICIPALITIES; LOCAL IMPROVEMENTS; WORK DONE BY FORCES
OF THE MUNICIPALITY OR BY CONTRACT

28 January 1953

It is thought that the provisions of G. S. 143-129 would be applicable to a contract for approximately \$50,000 for the extension and improvement of the water system of a municipality; and that the provisions of G. S. 160-84 would not be applicable. *RIDDLE v. LEDBETTER*, 216 N. C. 491; *LAUGHINGHOUSE v. NEW BERN*, 232 N. C. 596; *STEPHENSON v. RALEIGH*, 232 N. C. 42; G. S. 143-135 and G. S. 160-78.

LANDLORD AND TENANT; JURISDICTION OF JUSTICE OF THE
PEACE IN EJECTMENT PROCEEDINGS

28 January 1953

Under Article IV, Section 27, of the North Carolina Constitution, G. S. 7-124, G. S. 7-125, and G. S. 42-26, it is thought that a Justice of the Peace does not have original jurisdiction in an action in ejectment when the person in possession was originally the mortgagor in a deed of trust and

is simply holding over after foreclosure but without an agreement to pay rent. *McCOMBS v. WALLACE*, 66 N. C. 481; *McLAURIN v. McINTYRE*, 167 N. C. 350; *RILEY v. JORDAN*, 75 N. C. 180; *HUGHES v. MASON*, 84 N. C. 473; *HAUSER v. BRANSON*, 226 N. C. 264; *GOINS v. McLOUD*, 228 N. C. 655.

NOTARY PUBLIC; WHAT MAY BE ADOPTED AS A SEAL

28 January 1953

From what was said by our Supreme Court in the case of *DEANS v. PATE*, 114 N. C. 194, it would seem that a notary public may adopt as his seal any symbol or device that will make an imprint upon the paper. Therefore, it would seem that the legality of a conditional sales contract may not be successfully contested simply because the notary public in Mitchell County used a seal that he had formerly used in Watauga County. G. S. 10-2 and G. S. 10-9.

JUSTICES OF THE PEACE; QUALIFICATIONS

28 January 1953

A Justice of the Peace who qualified before an Assistant Clerk of the Superior Court eight days before the effective date of his commission has sufficiently conformed to the requirements of qualification so as to render his subsequent official acts valid.

JUSTICE OF THE PEACE; REMOVAL OF CAUSE; BASTARDY PROCEEDING

28 January 1953

The removal statute which allows a criminal or civil cause to be removed from one justice of the peace to another upon request does not apply to bastardy proceedings which simply permit the justices to issue the warrant and make the proceeding returnable before a court having jurisdiction.

DOUBLE OFFICE HOLDING; SECOND VICE-PRESIDENT OF NORTH CAROLINA STATE BAR; MEMBER OF BOARD OF SCHOOL TRUSTEES

29 January 1953

A member of a board of trustees of a city school administrative unit is a public officer, and the Second Vice-President of the North Carolina State Bar is also a public officer.

MUNICIPAL CORPORATIONS; AUTHORITY TO EXTEND WATER LINES AND
SERVE CUSTOMERS OUTSIDE THE CORPORATE LIMITS

29 January 1953

A municipal corporation can furnish water to consumers outside the corporate limits.

INTOXICATING LIQUOR; POSSESSION OF TAX-PAID WHISKY
IN A.B.C. COUNTY

29 January 1953

In a wet county, a person may have any quantity of tax-paid whisky at his home or on his premises without violating the law, provided it is not possessed for the purpose of sale.

COURTS; COSTS; CONSTRUCTION OF SECTION 2, CHAPTER 409,
SESSION LAWS OF 1949

29 January 1953

Construing Section 2, Chapter 409, Session Laws of 1949, together with G. S. 6-36 and G. S. 12-1, it is thought that the use of the expression "other expense of its operation" in the local statute does not have the effect of changing the application of G. S. 6-36 for Vance County.

DIVORCE; INSANE PERSONS

29 January 1953

Under the provisions of G. S. 50-5(6), one of the parties to a marriage may obtain a divorce from the party who is incurably insane, provided the evidence shows that the insane spouse is suffering from incurable insanity and has been confined for ten consecutive years next preceding the bringing of the action in an institution for the care and treatment of the mentally disordered.

EXECUTORS AND ADMINISTRATORS; JOINT BANK ACCOUNTS; SURVIVORSHIP

30 January 1953

In my opinion, the decision of the Supreme Court in the case of HALL v. HALL, 235 N. C. 711, does not hold that a valid joint bank account with a right of survivorship cannot be created by contract by husband and wife. I think it means rather that such an account with a right of survivorship was, in fact, not created under the particular facts of that case.

LAND REGISTRATION PURSUANT TO CHAPTER 43 OF THE GENERAL STATUTES;
SERVICE BY PUBLICATION

30 January 1953

Service of process may be had on non-residents in proceedings to register title pursuant to the provisions of Chapter 43 of the General Statutes, by complying with G. S. 1-98, 1-99, and 1-100.

AD VALOREM TAXES; PERSONAL PROPERTY; EXEMPTIONS;
FARM PRODUCTS IN HANDS OF PRODUCER

2 February 1953

All farm products owned by the original producer are exempt from ad valorem taxation for the year following the year in which grown, but not for any year thereafter.

PROBATE AND REGISTRATION; PARTNERSHIPS; INDEXING CHATTEL MORTGAGES
IN THE NAMES OF THE PARTNERSHIP AND OF ALL THE PARTNERS

2 February 1953

Construing together G. S. 161-22 and G. S. 59-39(3)(c), it is thought that when a chattel mortgage is executed in the name of a partnership and by more than one partner, the Register of Deeds should index and cross-index the instrument not only in the name of the partnership but in the names of all the partners who execute the instrument.

LAND REGISTRATION; TORRENS ACT

2 February 1953

In torrenization proceedings on appeal to the Superior Court, the trial is *de novo*.

CLERK OF THE SUPERIOR COURT; INCOMPETENTS; AUTHORITY OF
CLERK TO HANDLE FUNDS NOT TO EXCEED \$500

4 February 1953

Construing together G. S. 2-52 and G. S. 2-53, it is thought that when a Clerk of the Superior Court has in his possession less than \$500 belonging to an incompetent, who is a patient in the State Hospital at Butner, and who is entitled to small monthly payments upon a policy of disability insurance, the Clerk of the Superior Court is authorized to receive these payments and disburse the same in a case in which the Clerk would never have in his possession at any one time as much as \$500 belonging to such incompetent.

INCOME TAXES; EXEMPTIONS; SUPPORT PAYMENTS FOR MINOR
CHILDREN PER SEPARATION AGREEMENT

5 February 1953

A married man living apart from his wife paying support money for the children per a separation agreement is not entitled to take the \$300.00 exemption for the children.

BASTARDY; LIABILITY FOR NON-SUPPORT ACTION AFTER THE CHILD IS DEAD

5 February 1953

A non-support action may be brought against a putative father after the child has died.

MUNICIPAL ELECTIONS; NEW REGISTRATION; PROCEDURE TO FOLLOW

6 February 1953

Thirty days' notice of a new municipal registration of all voters is necessary pursuant to G. S. 160-35.

Chapter 163 of the General Statutes applies to municipal elections except as otherwise specifically provided in Chapter 160. Therefore, G. S. 163-31 applies in the event of a new municipal registration of all the voters, and requires the registration books to be open at nine o'clock on the fourth Saturday before the election and shall close at sunset on the second Saturday before each election.

AD VALOREM TAXATION; REAL PROPERTY; EXEMPTIONS; HOSPITAL PROPERTY

9 February 1953

G. S. 105-296 (10) lists the following exemption with respect to real property used for hospital purposes:

"Real property actually used for hospital purposes, including homes for nurses employed by or in training in such hospitals, held for or owned by hospitals organized and operated as non-stock, non-profit, charitable institutions, without profit to the members or their successors, notwithstanding that patients able to pay are charged for services rendered: *Provided*, all revenues or receipts of such hospitals shall be used, invested, or held for the purposes for which they are organized; and *provided further*, that where hospital property is used partly for such hospital purposes and partly rented out for commercial and business purposes, then only such proportion of the value of such building and the land on which it is located shall be exempt from taxation as is actually used for such hospital purposes."

AD VALOREM TAXES; EXEMPTIONS; MEMBERS OF ARMED FORCES

9 February 1953

With respect to liability for personal property taxes based on residence, Title 50, USCA, Appendix Section 574, which is a part of the Federal

Soldiers' and Sailors' Civil Relief Act, provides in effect that a person does not lose his residence in one place merely by reason of being absent therefrom in compliance with military orders and that a person does not acquire a residence or domicile in another state solely by reason of being present therein in compliance with military orders.

SCHOOLS; SCHOOL TREASURER; BOND; WHO REQUIRED TO SIGN CHECKS

9 February 1953

Construing together G. S. 115-165(3), G. S. 115-366 and G. S. 115-368(3), it is thought that only the duly designated treasurer is authorized to handle special funds belonging to individual schools. The treasurer is required to make the bond specified by G. S. 115-366 and such funds can be paid out only on checks signed by the principal of the school and the treasurer who has been selected by the county board of education.

ADOPTION; RESIDENCE OF PARENTS UNDER G. S. 48-9

9 February 1953

The residence for parents in the adoption law, as set forth in G. S. 48-9, subsection (1), is governed by the regular law of residence, that is, the mental intention to make the county the home of the parents.

CRIMINAL LAW; STATUTE OF LIMITATIONS; MISDEMEANORS

9 February 1953

A warrant does not stop the running of the statute of limitations in a misdemeanor case. A bill of indictment found by a grand jury is required to stop the running of the statute of limitations.

INCOME TAX; EXEMPTIONS; TEACHERS' RETIREMENT PAY

11 February 1953

North Carolina teachers' retirement pay is exempt from the State income tax.

MUNICIPAL CORPORATIONS; LICENSE TAXES; JEWELERS; SODA
FOUNTAINS SELLING BOTTLED DRINKS

11 February 1953

The privilege license tax levied with respect to carbonated draft arms of a soda fountain covers also the privilege of selling bottled drinks and a city may not collect a separate license tax from a person selling bottled drinks when such person has paid a soda fountain license tax with respect to the same business location.

TOWN COMMISSIONER AND MEMBER OF BOARD OF MANAGERS OF HOSPITAL

11 February 1953

The office of town commissioner is a public office within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding. However, the position of manager or trustee of a local hospital board is exempt from the provisions of the above section of the Constitution and is considered a commission for a public charity, and one person may hold both these offices at the same time.

FEDERAL TAXATION; DOCUMENTARY STAMP TAX;
SALE BY STATE INSTITUTION

11 February 1953

A state, or state agency, or a governmental subdivision of a state is not exempt from the payment of the Federal documentary stamp tax required to be affixed to deeds merely because of the governmental character of the State or its agency or subdivision.

COURTS; TRANSFER OF CASES TO THE RECORDER'S COURT OF YANCEY COUNTY

13 February 1953

Section 1 of a local act passed by the 1953 General Assembly applicable to the Recorder's Court of Yancey County only reads as follows:

"That the Clerk of the Superior Court of Yancey County is hereby authorized, empowered and directed to enter an order transferring to the Recorder's Court of Yancey County all cases now pending in the Superior Court of said County and coming within the jurisdiction of the Recorder's Court of said County, whether bills of indictment have been returned in such cases or not. That all cases so transferred will stand for trial in said Recorder's Court as though said actions had been originally instituted in said Recorder's Court or as though the defendants had been bound over to said Recorder's Court instead of to the Superior Court of Yancey County."

MUNICIPAL CORPORATIONS; CHARTER PROVISIONS PREVAIL
OVER GENERAL LAW

16 February 1953

Where there is a conflict between the charter provisions of a town and the general law relating to the registration of the voters, the charter provisions of the town prevail.

MUNICIPALITIES; ELECTIONS; APPOINTMENT OF REGISTRAR
AND JUDGES; CONDUCT OF ELECTIONS

16 February 1953

The date of the town election in Tabor City is fixed by Chapter 18, Private Laws of 1935. This Act fixes the date as the second Tuesday in June 1937 and biennially thereafter. G. S. 160-32 and G. S. 160-41 require the board of commissioners at least thirty days before any town election to appoint a registrar and two judges to conduct the election. Elections in the Town of Tabor City are governed by the foregoing provisions of the general law. G. S. 163-165 provides that no person shall, while the polls are open at polling places, loiter about or do any electioneering within such polling place or within fifty feet thereof. The foregoing provision is applicable to elections in the Town of Tabor City. In the absence of a contrary local statutory provision, it would seem that markers are not permitted in the town election of Tabor City.

PROBATE AND REGISTRATION; ACKNOWLEDGMENTS TO BE TAKEN
BY OFFICERS IN THE ARMED FORCES

16 February 1953

An officer of the Armed Forces may lawfully take the acknowledgment of a civilian who is serving with the Armed Forces.

MUNICIPAL ELECTIONS; GENERAL ELECTION LAW; WHICH CONTROLLING

18 February 1953

Municipal elections should be conducted in accordance with charter provisions except as to Australian Ballot Law provisions.
INCOME TAXES; TRUSTS AND ESTATES; NON-RESIDENT TRUSTEE WITH NON-

RESIDENT BENEFICIARY, TRUST PROPERTY IN NORTH CAROLINA;
DUTY OF TRUSTEE TO FILE RETURN

18 February 1953

When a non-resident trustee distributes rents received from North Carolina property to non-resident beneficiaries, the beneficiaries are liable for income tax but the trustee is not required to file a return.

(1) TOWNSHIP CONSTABLE; JURISDICTION

(2) DOUBLE OFFICE HOLDING; CONSTABLE AND DEPUTY SHERIFF

20 February 1953

(1) A township constable has authority to make arrests and serve process anywhere within the county in which he holds such office. See STATE v. CORPENING, 207 N. C. 805.

(2) The office of township constable and that of deputy sheriff are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

SCHOOLS; CREATION OF SCHOOL DISTRICT BY SPECIAL ACT; RESPONSIBILITY
OF COUNTY COMMISSIONERS FOR LEVYING TAXES IN SCHOOL DISTRICT

20 February 1953

Since 1917 Section 29, Article II, of the State Constitution, has prohibited the creation of a school district by a special act of the legislature. Section 4, Chapter 562, Public Laws of 1933, now codified as G. S. 115-352, abolished all school districts in the State except for the one purpose of paying the then outstanding school indebtedness. The same act authorizes the creation of school districts in counties and also the creation of city administrative units, for administrative purposes only. G. S. 115-363 prescribes the method for making local school budgets. G. S. 153-9 provides for the levy of taxes by county commissioners.

MUNICIPALITIES; USE OF SURPLUS FUNDS FOR RECREATIONAL PURPOSES

20 February 1953

It is thought that nontax revenues may be used by a municipality for recreational purposes under the provisions of Article 12, Chapter 160 of the General Statutes.

MUNICIPALITIES; EXTENSION OF CORPORATE LIMITS; EXCLUDING AREA
WITHIN OUTER BOUNDARIES OF EXTENSION

23 February 1953

A municipality may extend its boundaries under the statute, G. S. 160-445 et seq, and, at the same time, exclude a part of the area within the extended boundaries or, in other words, may exclude a portion of the area within the outer boundaries of the extension, provided such portion excluded would not cause the other portion to be non-contiguous to the municipality.

COUNTY HEALTH CENTER; RIGHT OF COUNTY TO APPROPRIATE SURPLUS IN
GENERAL FUND TO DEFRAY PART OF COST OF CONSTRUCTION

23 February 1953

A county can legally spend surplus in its general fund to pay its part of the cost of construction of a county health center, under the public health program, which provides that State and Federal sources will finance approximately 75% of the cost of such building.

LOTTERY LAWS; "JACK POT NIGHT"

23 February 1953

In order to constitute a lottery, the following elements must be present: (1) a prize; (2) a consideration; and (3) the winner of the prize is to be determined by some formula of chance. See *STATE v. LIPKIN*, 169 N. C. 265.

RIGHT OF SENATE OR HOUSE OF REPRESENTATIVES TO ADJOURN SESSIONS
OTHER THAN FROM DAY TO DAY AND OTHER THAN BY JOINT RESOLUTION;
AFFECT OF ADJOURNMENTS BEYOND CONSTITUTIONAL REQUIRE-
MENT ON PAY OF MEMBERS AND PRESIDING OFFICERS

26 February 1953

Under Article II, Section 28, of the Constitution and G. S. 120-3, the Senate and House of Representatives cannot adjourn except from day to day unless adjournment is done by joint resolution. Day to day adjournments require adjournments from one day to the succeeding day, but excluding Sunday, on account of immemorial practice.

INCOME TAXES; DEDUCTIONS; NON-RESIDENT; RECIPROCITY UNDER
SECTION 325 WITH SOUTH CAROLINA

26 February 1953

Section 2439 of the South Carolina Code contains the requisite reciprocity provision of Section 325 (2) of the Revenue Act.

INCOME TAXES; DEDUCTIONS; NON-RESIDENT; RECIPROCITY
UNDER SECTION 325 WITH VIRGINIA

26 February 1953

Section 58-104 of the Virginia Code conforms to the reciprocity requirements of Section 325 (2) of the Revenue Act.

MUNICIPAL TAXATION; DRIVE-IN THEATERS; THEATERS LOCATED
OUTSIDE OF MUNICIPALITIES

26 February 1953

A municipal corporation may not levy a license tax on a drive-in theater located outside the corporate limits of the municipality.

MOTOR VEHICLES; MUNICIPAL POWERS; AUTHORITY TO REQUIRE
AMBULANCES TO OBEY TRAFFIC SIGNALS

26 February 1953

Municipal authorities may require ambulances answering emergency calls to obey stop lights and other signaling devices.

LICENSE TAX; COLLECTION AGENCY; INSTALLMENT PAPER DEALER; LOAN
AGENCY PERMIT TO ENGAGE IN BUSINESS; COLLECTION AGENCY

27 February 1953

A corporation formed to factor unsecured accounts receivable for retail merchants, by purchasing such accounts without recourse, is not subject to the license taxes imposed upon installment paper dealers, loan agencies, or collection agencies. It is not required to obtain a permit from the Insurance Commissioner before engaging in such business.

INCOME TAX; EXEMPTION; DEPENDENT; WHO MAY CLAIM

27 February 1953

As between husband and wife, only the spouse who is entitled to the \$2,000 exemption may claim additional exemptions for dependent children.

MUNICIPAL CORPORATION; MUNICIPAL TAXATION; STREET IMPROVEMENTS;
SPECIAL ASSESSMENTS; CHURCH PROPERTY NOT EXEMPT

2 March 1953

A church is not exempt from assessments for street improvements on streets adjacent to church property.

PRIVATE DETECTIVES; CARRYING CONCEALED WEAPONS

2 March 1953

A private detective is not permitted by law to carry concealed weapons about his person.

DEEDS; ESTATES; FORFEITURES; CONDITIONS SUBSEQUENT; REPUGNANCY

2 March 1953

A deed of conveyance to school trustees was on a printed form in which the granting clause, the habendum and the warranties were sufficient to convey a fee simple title. Immediately after the warranty clause appeared the following: "Said deed is executed and accepted upon the express condition that should said land cease to be used for the purpose of a public school, the same shall then at once revert to the said N. P. Flowers (the grantor)." It is thought that the decision in *KENNEDY v. KENNEDY*, 236 N. C. 419, and cases there cited, is controlling, and that the County Board of Education, successor to the original grantees, has the fee simple title to the property. The situation is to be distinguished from that set out in *CHURCH OF HENDERSON v. YOUNG*, 130 N. C. 8, and *BRIT-TAIN v. TAYLOR*, 168 N. C. 271.

MOTOR VEHICLES; PARKING METERS

2 March 1953

A city may regulate parking of vehicles upon the street by the use of parking meters. The accuracy or inaccuracy of a meter is a question of fact to be established by proper evidence. The fact that another person, who has committed the same offense, has not been arrested is not a defense to the person properly arrested.

REPORTING OF FIRES EXTINGUISHED BY OCCUPANT OF OCCUPANT'S PREMISES

5 March 1953

There is no law which requires a person who discovers a fire and extinguishes the same to report the fire to the local authorities.

MUNICIPALITIES; ZONING ORDINANCE; STREET CORNERS

5 March 1953

In order to zone the remaining unzoned corners of an intersection by petition under G. S. 160-173, when two or more of the corners of the intersection are already zoned, the petition must carry the names of the property owners of all of the remaining corners.

DOUBLE OFFICE HOLDING; TOWNSHIP CONSTABLE; TOWN COMMISSIONER

9 March 1953

The office of township constable and that of town commissioner are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

A person need not resign a public office in order to become a candidate for another public office.

LICENSE TAXES; FLORISTS; STATE LICENSE TAXES;
MUNICIPAL LICENSE TAXES

10 March 1953

There is no State privilege license tax imposed on florists.

SCHOOLS; FINES AND FORFEITURES PAID TO THE COUNTY BOARD OF EDUCATION

10 March 1953

Fines collected by a City Recorder's Court are required to be turned over to the County Board of Education in conformity with the requirements of Article IX, Section 5, of the State Constitution and G. S. 115-179, and may be used for the purposes specified in G. S. 115-356. BOARD OF EDUCATION v. HENDERSON, 126 N. C. 689.

CHATTEL MORTGAGES; WHAT INCLUDED IN THE TERM "HOUSEHOLD AND
KITCHEN FURNITURE" AS USED IN G. S. 45-3

11 March 1953

It is thought that the term "household and kitchen furniture" used in G. S. 45-3 is broad enough to include electric refrigerators, electric ranges, radios, television sets and pianos. THOMAS v. SANDERLIN, 173 N. C. 329.

INCOME TAXES; GROSS INCOME; DISTRIBUTION OF CAPITAL GAINS BY
REGULATED INVESTMENT COMPANY

11 March 1953

When a shareholder has the option of taking a cash dividend or a stock dividend otherwise not taxable, such option renders the shareholder liable for income tax on the distribution whether taken in cash or in stock.

MUNICIPALITIES; LOCAL IMPROVEMENTS; WORK DONE BY FORCES OF THE
MUNICIPALITY OR BY CONTRACT

11 March 1953

G. S. 160-84 provides that the governing body of a municipality shall have the power to determine the character and type of construction and of material to be used in making a local improvement and whether the work shall be done by the forces of the municipality or by contract. The term "public improvement" is defined in G. S. 160-78 and includes the hard-surfacing of streets and sidewalks. G. S. 143-135 provides that Article 8, Chapter 143, of the General Statutes, shall not apply to the State or subdivision thereof in the expenditure of public funds when the total cost of a project shall not exceed \$15,000 and if the work is performed by the duly elected officers or agents of the State or subdivision thereof. Construing these statutes together, it is thought that the provisions of G. S. 143-129 apply when the cost of a project exceeds \$15,000.

MUNICIPAL ELECTIONS; VACANCIES IN NOMINATIONS

11 March 1953

Chapter 716 of the 1951 Session Laws, providing for municipal elections in the City of Albemarle, appears to contemplate that the political party must nominate a full ticket or none at all. The county political executive committee must fill all vacancies in nominations. School board members are not elected under this statute.

SCHOOL LAW; NOTIFICATION OF REJECTION OF TEACHER

11 March 1953

G. S. 115-359 provides:

"It shall be the duty of such county superintendent or administrative head of a city administrative unit to notify all teachers and/or principals

now or hereafter employed by registered letter of his or her rejection prior to the close of the school term . . .”

If a teacher's contract is not to be renewed, the Board of Education should take official action and authorize the superintendent to notify the teacher. This notice must be dispatched by registered mail prior to the close of the school term. Such notice may be mailed on the last day of the term. *DAVIS v. MOSELEY*, 230 N. C. 645, and *BOARD OF EDUCATION v. DICKSON*, 235 N. C. 359.

SCHOOLS; CORPORAL PUNISHMENT ADMINISTERED BY TEACHER OR MONITOR

11 March 1953

A teacher is criminally responsible for an assault upon pupils under the following circumstances:

1. “If he inflicts such punishment as produces or threatens lasting mischief, that is, permanent injury to the child.
2. “If he inflicts punishment not in the honest performance of duty, but, under the pretext of duty, to gratify personal malice.” *STATE v. LONG*, 117 N. C. 791.

G. S. 115-378.1 provides that the superintendent or principal of every public school to which students are brought by school bus may appoint a monitor for each bus. The statute further provides that it shall be the duty of the monitors so appointed to keep order and to do other things necessary for the safe transportation of children in public school buses in North Carolina under rules and regulations established by the county boards of education or the principal of the school where the bus is operated.

MUNICIPAL CORPORATIONS; AUTHORITY TO FURNISH QUARTERS AND SPACE IN PUBLIC BUILDINGS FOR USE OF CIVIC CLUBS

12 March 1953

There is no authority for a municipal corporation to furnish quarters or office space in a municipally-owned building to be used by civic clubs or similar organizations.

INCOME TAX; GROSS INCOME; ANNUITIES; TAXATION AFTER COST RECOVERED

16 March 1953

A person is subject to income tax liability only with respect to 3% of the cost of the annuity even after he has recovered the entire cost of the annuity, under the provisions of G. S. 105-141.

MUNICIPALITIES; PURCHASE OF SEWER AND WATER SYSTEM

16 March 1953

A contract to purchase \$7,000 worth of water and sewer facilities from private developers within the city limits is not valid unless first advertised under G. S. 143-129.

MUNICIPALITIES; TORT LIABILITY FOR INJURY TO THIRD
PERSON BY FIRE DEPARTMENT

16 March 1953

A municipal corporation is not liable to third persons for the negligence of its agents or employees when such agents or employees are engaged in the performance of a governmental function as opposed to a proprietary function. The maintenance of a fire department is a governmental function. *KLASSETTE v. DRUG COMPANY*, 227 N. C. 353; *MABE v. WINSTON-SALEM*, 190 N. C. 486; *HOWLAND v. ASHEVILLE*, 174 N. C. 749; *PETERSON v. WILMINGTON*, 130 N. C. 76.

However, Chapter 1015, Session Laws of 1951, authorizes municipalities by securing liability insurance to waive their governmental immunity from liability for any damage by reason of death or injury to person or property proximately caused by the negligent operation of any motor vehicle but only to the extent of the amount of insurance carried.

DOUBLE OFFICE HOLDING; COMMISSIONER OF A HOSPITAL AUTHORITY AND
COMMISSIONER OF A HOUSING AUTHORITY

16 March 1953

The office of commissioner of a hospital authority and that of commissioner of a housing authority are both public offices within the meaning of Article XIV, Section 7, of the Constitution which prohibits double office holding, and one person may not hold both these offices at the same time.

MARRIAGE LAWS; HEALTH CERTIFICATES; APPROVED LABORATORIES

11 March 1953

There is nothing in the law which requires the North Carolina State Board of Health to furnish a list to registers of deeds of laboratories which have been approved by the other states of the United States.

SCHOOLS; RESPONSIBILITY OF COUNTY BOARD OF EDUCATION TO
HAVE SCHOOL FUNDS AUDITED

16 March 1953

G. S. 115-168 places the responsibility on the county board of education to enter into a contract on or before August 1 of each year for the auditing of the books and records of the county treasurer, which audit will correctly reflect the status of each public school fund in the county.

CONTRACTS; RIGHT TO CHARGE DIFFERENT WATER RATES TO PERSONS LIVING
OUTSIDE CITY LIMITS; POWER OF GOVERNING BODY TO BIND ITS SUCCESSORS

16 March 1953

In the administration of its proprietary affairs, the governing body of a municipality may make reasonable contracts binding upon its successors

for a term of years. *PLANT FOOD COMPANY v. CHARLOTTE*, 214 N. C. 518. However, it is doubtful that the contract purporting to bind its successors forever is valid. *WILMINGTON v. BRYAN*, 141 N. C. 666.

In this case it is suggested that a test case be taken to the Supreme Court for construction of contract in question.

INCOME TAX; RESIDENT INDIVIDUAL; DEDUCTION;
INCOME EARNED IN ANOTHER STATE

18 March 1953

When a partnership composed of residents of North Carolina has a manufacturing plant in North Carolina and maintains a sales office in another state where it employs salesmen, all of whose activities are in such other state, the sales office is an established business in such other state and the income derived from it and reported by the partners to the other state for taxation is deductible from the total income in determining the amount taxable by North Carolina.

CIVIL PROCEDURE; EJECTMENT

18 March 1953

Sheriffs executing ejectment papers duly issued must remove both persons and property upon the premises designated. Any costs involved therein are taxable against the unsuccessful defendant.

MUNICIPALITIES; PAVING ASSESSMENTS; LIABILITY OF SCHOOL PROPERTY
FOR ASSESSMENTS

19 March 1953

School property is subject to paving assessments lawfully made in conformity with the provisions of Article 9, Chapter 160 of the General Statutes. *RALEIGH v. PUBLIC SCHOOL SYSTEM*, 223 N. C. 316.

RABIES ACT; VETERINARIAN; APPOINTMENT OF RABIES INSPECTOR

19 March 1953

The authority to appoint rabies inspectors is subject to the condition that it be approved by the Commissioner of Agriculture; that a sufficient number be appointed to administer the law; that graduate licensed veterinarians be given preference in appointment, and that appointees be of good moral character and by training and experience demonstrate the ability to perform their duties. Any veterinarian not a rabies inspector who advertises that his fees are acknowledged by the sheriff or tax collector, when such is not the case, may be guilty of violation of G. S. 14-117, and may be referable to the Board of Examiners for action.

INCOME TAX; EXEMPTIONS; PERSON BECOMING RESIDENT IN MIDDLE OF YEAR

20 March 1953

When a person becomes a resident of North Carolina during a calendar year, he must prorate his income tax personal exemption on the basis of the relationship of his North Carolina income to his income earned everywhere.

LANDLORD AND TENANT; VIOLATION OF AGRICULTURAL LEASES AND CONTRACTS; LIABILITY OF PERSON EMPLOYING TENANT WHO HAS VIOLATED THE PROVISIONS OF HIS CONTRACT

20 March 1953

There is doubt if the Legislature could impose a liability of this kind upon one employing another who has merely incurred civil liability by a breach of his contract. This right of a citizen to contract and deal with another is itself among the liberties and vested rights protected by constitutional guarantees, and should always be carefully upheld by the Courts.

MUNICIPAL CORPORATIONS; PAYMENT FROM PUBLIC FUNDS DUES OF CITY OFFICIALS IN THE CHAMBER OF COMMERCE

20 March 1953

There is no law which would authorize a municipality to pay the dues of its officials for membership in a chamber of commerce.

SCHOOLS; APPOINTMENT OF LOCAL SCHOOL COMMITTEE;
NUMBER OF COMMITTEEMEN

20 March 1953

Under G. S. 115-354, it would seem to be optional with a county board of education as to whether it names school committees consisting of three, four or five members. It may name committees of three members each for some schools and committees of five members each for other schools in the county. However, when a committee of three members has been named for a particular school, the membership of that committee may not be increased until the end of the biennium.

SCHOOLS; SALE OF SCHOOL PROPERTY; STATUTE OF LIMITATIONS

20 March 1953

G. S. 115-86 allows a private sale of abandoned school property after the property has first been offered at public auction, but there seems to be no provision allowing a board of education to sell property on deferred payments. It is thought that a local statute is necessary to authorize such a sale in a particular county.

It is also thought that statutes of limitations run against boards of education as well as individuals. G. S. 1-42.

LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM; AUTHORITY OF
EMPLOYER TO INCREASE MATCHING CONTRIBUTION

20 March 1953

A participating employer in the Local Governmental Employees' Retirement System is not authorized to pay more matching contributions than prescribed in G. S. 128-30.

SALES TAX; EXEMPTIONS; SINGLE ARTICLES; AUTOMOBILE ACCESSORIES
INSTALLED BY DEALER

23 March 1953

Ordinarily, all automobile accessories installed by a dealer are subject to the State Sales Tax and are not regarded as being within the "single article" limitation applicable to the automobile, itself.

BAIL; WHO MAY TAKE; ARREST; DUTY TO TAKE ARRESTEE BEFORE
MAGISTRATE

23 March 1953

Except as provided by G. S. 15-107 and 15-108, the Sheriff has no authority to fix bail.

While it is an officer's duty to immediately take an offender before a Justice or other tribunal having jurisdiction, if it is late at night, the officer may hold the offender in custody until early next morning.

SCHOOLS; ELECTION OF CITY SUPERINTENDENT; TERM OF OFFICE

23 March 1953

It would seem that Sections 6 and 8, Chapter 26, Private Laws of 1935, fixing the term of office of the City Superintendent of Schools in Lexington at one year was repealed by Section 6, Chapter 358, Public Laws of 1939, which fixes the term of office of City Superintendents at two years.

PAY OF MEMBERS OF THE GENERAL ASSEMBLY

24 March 1953

Should the Constitution of North Carolina be amended so as to provide for an annual session of the General Assembly, the pay period for the members of the General Assembly would still be limited to ninety days for the term for which the members were elected, and the members would not be entitled to receive pay for ninety days during each annual session.

EMINENT DOMAIN; SERVICE OF PETITION

24 March 1953

In a condemnation proceeding, pursuant to Chapter 56 of the General Statutes, the petition should be served in the manner provided by Section 56-8.

PUBLIC LIBRARIES; APPROPRIATION BY COUNTY BOARD OF EDUCATION

24 March 1953

It would seem that under G. S. 153-9(37) and (41) a county board of education may legally enter into a contract with the trustees of a public library for library service to the school. If an appropriation to carry out such contract is approved in the next budget by the county commissioners and the State Board of Education, such appropriation will become effectual.

JUSTICES OF THE PEACE; PEACE WARRANTS; REMOVAL OF CASE FROM
ONE JUSTICE OF THE PEACE TO ANOTHER

26 March 1953

Under the express language of G. S. 7-147 either a civil or criminal action may be removed for trial from one justice of the peace to another in the same township by complying with the terms of the statute.

Under subsection 2 of G. S. 1-5, a proceeding on a peace warrant is now held to be a criminal action. *STATE v. LOCUST*, 63 N. C. 574; *STATE v. OATES*, 88 N. C. 668; *STATE v. LYON*, 93 N. C. 575.

See the earlier case of *STATE v. PATE*, 44 N. C. 244.

EXECUTORS AND ADMINISTRATORS; COMMISSIONERS NOT ALLOWED
ON DISTRIBUTIVE SHARES

26 March 1953

Under the express language of G. S. 28-170, an executor or administrator is not entitled to commissions on amounts distributed to legatees or next of kin.

MUNICIPALITIES; RIGHT TO ENTER INTO CONTRACT FOR PERPETUAL
CARE FOR A CEMETERY ADJOINING A MUNICIPAL CEMETERY

26 March 1953

A municipality is authorized by G. S. 160-260.2 to condemn or acquire an easement on any cemetery adjoining a municipal cemetery for the purpose of providing perpetual care of such adjoining cemetery.

ELECTION LAWS; BALLOTS; USE OF NICKNAME ON BALLOTS

26 March 1953

It is not permitted for a person to use his name and his nickname on an official ballot. He may use his real name or he may adopt a nickname and have this adopted name placed on the ballot.

PUBLIC RECORDS; EXAMINATION OF BIRTH CERTIFICATES IN THE
OFFICE OF THE REGISTER OF DEEDS

26 March 1953

The records of birth certificates filed in the office of the register of deeds are public records and are required to be open for inspection at reasonable times during regular business office hours. There is no authority for a register of deeds to refuse to let any interested person examine these records and make copies of the same.

INCOME TAXES; EXEMPTIONS; INCLUSION OF DISABILITY PENSION AS
INCOME NOT TAXABLE UNDER THIS ARTICLE

26 March 1953

Disability pension received from the Federal Government must be included as gross income not taxed under the Income Tax Law for purposes of determining the exemption under Section 324 (1) (b) where the husband's other income is less than \$500.00.

MOTOR VEHICLES; DRIVER'S LICENSE; DRIVING UNDER THE
INFLUENCE OF INTOXICANTS

27 March 1953

Upon a second conviction of driving while under the influence of intoxicating liquor the statute makes a revocation of the driver's license for three years mandatory.

OUT-OF-STATE AID TO FOURTH YEAR MEDICAL STUDENTS; G. S. 116-100

27 March 1953

Out-of-State Aid cannot be granted by North Carolina College for the fourth year medical education for a student attending Howard University, as the University of North Carolina is not now offering such course.

1. SCHOOLS; AUTHORITY TO REMOVE TEACHERS; 2. DOUBLE OFFICE HOLDING;
MEMBER OF COUNTY WELFARE BOARD AND DISTRICT SCHOOL COMMITTEE

27 March 1953

G. S. 115-77 gives to county boards of education the power to investigate and pass upon the moral character of any teacher and to dismiss such teacher if found of bad moral character. G. S. 115-143 provides that the school committee of a district, with the approval of the superintendent,

may dismiss a teacher for immoral or disreputable conduct in the community. From the foregoing, it would seem that charges of immoral or disreputable conduct against a teacher may be brought either before the county board of education or the local school committee.

A member of a county welfare board is a commissioner of public charities, coming within the exception contained in Article 14, Section 7, of the State Constitution. Therefore, such person may at the same time serve as a member of a local school committee.

SCHOOLS; TRANSFER OF STUDENTS FROM ONE ADMINISTRATIVE
UNIT TO ANOTHER; TUITION

27 March 1953

G. S. 115-352 provides that children shall attend school in the district in which they reside unless transferred by the State Board of Education.

MOTOR VEHICLES; CONTRACT CARRIERS FOR HIRE; UNITED STATES MAIL

30 March 1953

Under the 1953 amendment to G. S. 20-38 (r) a for hire license is not required where the only transportation of the property of another is transportation of the United States mail under a contract with the United States made prior to July 1, 1948, or under a renewal or extension of such contract. A for hire license is required where the contract was not made until some time subsequent to July 1, 1948.

DEED OF TRUST; CANCELLATION OF RECORD

30 March 1953

Under the provisions of G. S. 45-37(1), it is thought that the mortgagee or his assignee of record can cancel a two-party mortgage, but only the trustee or his legal representative, duly authorized agent or attorney, can cancel of record a deed of trust, which is a three-party instrument.

AD VALOREM TAXES; PERSONAL PROPERTY EXEMPTIONS; \$300.00
EXEMPTION; HEAD OF HOUSEHOLD

30 March 1953

Only one \$300.00-personal-property exemption is allowed to each household, consisting of the head of the household and all the dependents, which may be distributed among the members of the household as they see fit.

MOTOR VEHICLES; OVERLOAD; LIGHT TRAFFIC HIGHWAY

1 April 1953

The penalty for overloading upon a light traffic highway is properly imposed when the gross weight of the vehicle and the load exceeds the

limit fixed by the State Highway and Public Works Commission and shown on signs posted on the highway as the "weight limit."

COUNTY BOARDS OF HEALTH; RULES AND REGULATIONS; PUBLICATION

1 April 1953

The general laws of North Carolina do not require rules and regulations adopted by county boards of health to be published in a newspaper for any specific period of time.

AD VALOREM TAXES; MUNICIPAL CORPORATIONS; ELECTRIC DISTRIBUTION SYSTEM; LEASE-PURCHASE CONTRACT WITH PRIVATE CORPORATION

2 April 1953

When a municipality and a private power company execute a contract whereby the municipality leases its electric distribution system to the power company for a period of years and the municipality presently contracts to sell, and the power company presently contracts to purchase the property at the expiration of the term for a stipulated price, the power company is presently the owner of the property for purposes of ad valorem taxation.

MUNICIPAL TAXATION; LICENSE TAXES; PERSONS ENGAGED IN MORE THAN ONE TAXABLE ACTIVITY; DELIVERING FUEL OIL WITHIN MUNICIPALITY; AIR CONDITIONING CONTRACTORS

2 April 1953

Plumbers, heating contractors and electricians may be required to pay a merchant's retail license in addition to their contractor's license when they sell supplies, materials, appliances and equipment at retail in their stores. In my opinion such retail sale of merchandise constitutes a separate taxable business activity different from that of contracting and, therefore, such contractors could also be required to pay the merchant's license tax.

PRIMARY ELECTION IN TOWN OF WENDELL; H. B. 493 (1953)

2 April 1953

It would seem that the legislative intent in H. B. 493 (1953) in using the expression "the general election" in subsection (2) of the Act was to refer to the municipal election in 1953 and biennially thereafter instead of the county election to be held in November. This position is strengthened by the use of the term "general municipal elections" in subsection (1) thereof.

DOUBLE OFFICE HOLDING; MEMBER OF TOWN BOARD OF COMMISSIONERS;
MEMBER OF LOCAL SCHOOL BOARD

2 April 1953

Membership on a town board of commissioners and membership on a local school board are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

DIVORCE LAWS

2 April 1953

There is no provision under our law where a person may be granted an automatic divorce on the grounds of adultery. In order to secure a divorce in this State, there must be an action begun in the Superior Court.

MEDICAL CARE COMMISSION; HOSPITALS; BIDS UNDER PUBLIC
CONTRACT AT; LOWEST RESPONSIBLE BIDDER

3 April 1953

A public body awarding bids under the Public Contracts Act may award a bid to the second lowest bidder if a proper finding is made, based upon facts and circumstances, which shows that the second lowest bidder, in the opinion of the awarding body, is the lowest responsible bidder.

PRIMARY ELECTION; PARTY AFFILIATION OF CANDIDATES; CHAPTER 1128,
SESSION LAWS OF 1951

3 April 1953

Construing together Sections 2 and 9, Chapter 1128, Session Laws of 1951, G. S. 163-119 and G. S. 163-50, it is thought that a person who was registered as a Democrat prior to April 4th 1953 cannot qualify as a Republican candidate for city commissioner in Hendersonville because of the prohibition contained in G. S. 163-119.

ADMINISTRATION OF ESTATES; PROCEEDS OF RECOVERY FOR WRONGFUL DEATH;
SHARE OF INFANT CHILD; ACCOUNTING BY ADMINISTRATOR

3 April 1953

Proceeds of a recovery for wrongful death are to be distributed in the same manner as assets of the deceased, except that they are not liable generally for debts of the decedent. The share distributable to a minor must be paid to a duly qualified guardian.

COUNTIES AND COUNTY COMMISSIONERS; APPROPRIATIONS FOR LIGHTING
ATHLETIC FIELD AT HIGH SCHOOL

3 April 1953

There is no authority for a board of county commissioners to make a contribution of tax revenues to be expended in equipping a high school athletic field with floodlights.

COUNTIES; USE OF BEVERAGE TAX TO PAY SALARIES OF
LAW ENFORCEMENT OFFICERS

7 April 1953

Since G. S. 18-81.1 provides that the funds allocated to a county by the State from the beverage tax may be used as any other general or surplus funds of the county may be used, it is thought that Caswell County is authorized to use a part of said funds to pay the compensation of certain special deputy sheriffs who devote most of their time to the enforcement of the prohibition laws.

COURTS; MUNICIPAL RECORDER'S COURT; JUSTICES OF THE PEACE;
CONCURRENT JURISDICTION

7 April 1953

The Municipal Recorder's Court of Kings Mountain and a Justice of the Peace have concurrent jurisdiction over those offenses committed within the corporate limits and when the punishment for the offense committed does not exceed a \$50.00 fine or 30 days in jail.

MUNICIPALITIES; PUBLIC LIBRARIES; RIGHT TO APPROPRIATE NON-TAX
FUNDS FOR MAINTENANCE THEREOF

7 April 1953

Municipalities may appropriate funds not derived from taxation for maintenance and support of a public library, except funds derived from operation of municipal electric and power plants, which are committed to the payment of bonds and interest and for other local improvements. See G. S. 160-397.

MUNICIPALITIES; USE OF SURPLUS FUNDS FOR RECREATIONAL PURPOSES

7 April 1953

It is thought that a municipality may not use a portion of its general fund to help finance a recreational program for school children during the summer months. However, surplus nontax revenues may be used to finance an organized system set up under Article 12, Chapter 160, of the General Statutes.

NORTH CAROLINA STATE BOARD OF EXAMINERS IN OPTOMETRY; RECIPROCITY
REQUIREMENTS; RULE 14; AUTHORITY TO ADOPT RULES AND REGULATIONS

7 April 1953

The State Board of Examiners in Optometry cannot prescribe any stricter requisites for applicants to practice in this State from another State under the reciprocity clause than is required for applicants for examination who are residents of this State.

HOUSING AUTHORITIES; PURCHASE OF SUPPLIES AND EQUIPMENT;
EFFECT OF G. S. 143-129 AND G. S. 157-9

8 April 1953

In the purchase of material and supplies, housing authorities are not compelled to comply with the requirements of G. S. 143-129, because of the provisions of G. S. 157-9, as follows:

"No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the Legislature shall specifically so state."

MUNICIPAL CORPORATIONS; APPROPRIATIONS FOR ADVERTISING PURPOSES TO
ATTRACT INDUSTRY AND TOURIST TRADE

9 April 1953

In the absence of an Act of the General Assembly authorizing the same, there is no authority for a municipality to appropriate public money for advertising the municipality so as to attract industry and tourist trade. Even an Act of the Legislature authorizing such appropriations would not be valid unless such action was approved by a vote of the people.

(1) INTANGIBLES TAXES—EXEMPTION OF HOUSING AUTHORITY BONDS

(2) INCOME TAXES—EXEMPTION OF INTEREST FROM HOUSING
AUTHORITY BONDS

10 April 1953

Ordinarily the tangible personal property of a corporation is subject to ad valorem property taxation in the county where the principal office of the corporation is located. However, when a corporation regularly garages its trucks in a warehouse rented for this purpose in a county other than the county where the principal office is located, such trucks are subject to property taxation in the county where garaged.

LICENSE TAXES; OIL DISTRIBUTORS; RIGHT OF TOWN TO TAX

10 April 1953

A town may tax a distributor of oil, gas and kerosene only if there is located within the town an agency, station or warehouse for the distribution or sale of such commodities, under Section 137 of the Revenue Act.

DOUBLE OFFICE HOLDING; MEMBER OF COUNTY ALCOHOLIC BEVERAGE
CONTROL BOARD; COUNTY TAX SUPERVISOR

10 April 1953

The office of membership on a county alcoholic beverage control board and the office of county tax supervisor are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

COURTS; SUSPENSION OF SENTENCE; DUTY TO LIST CASES FOR
NON-COMPLIANCE WITH CONDITIONS OF SUSPENSION

10 April 1953

It is the duty of a clerk of a court, as the custodian of its records and as chief administrative officer of the court, to make up a list of cases where conditions of suspension of sentence have apparently been violated and turn the same over to the prosecuting officer.

COURTS; DOMESTIC RELATIONS AND JUVENILE COURTS; TRANSFER OF CASES
FROM JUVENILE COURT AND SUPERIOR COURT TO DOMESTIC
RELATIONS COURT

10 April 1953

When a domestic relations court is organized and established in a county, all cases should be transferred from the Superior Court, inferior criminal courts and juvenile court to the domestic relations court which fall within the jurisdiction of the domestic relations court. This is true even though some of the cases have only been tried but retained for further orders, such as probation or suspension of judgment.

MUNICIPAL ELECTIONS; NOMINEES FOR TWO OR MORE OFFICES CONSTITUTING
A GROUP; MAJORITY OF VOTES CAST; CHARTER OF TOWN OF BENSON

10 April 1953

Where a town charter provides that the eight highest candidates in a primary shall be printed on the ballot in the general election and also provides that a candidate receiving a majority of the votes shall be the sole candidate for an office, where there are four offices on the board of commissioners, the candidate receiving the majority and the seven persons receiving the next highest vote, in order, are the nominees who shall be printed on the ballot in the general election.

AD VALOREM TAXES; PERSONAL PROPERTY; PLACE OF LISTING; AUTOMOBILES
USED IN CONNECTION WITH OUT-OF-TOWN BUSINESS

13 April 1953

An automobile owned by a resident of a town is not subject to town ad valorem taxation when such automobile is used in connection with a

business carried on outside the town and is regularly garaged at such place of business.

BEVERAGE TAX; NECESSITY FOR LICENSE WHEN COUNTY VOTES
BEER OUT AND TOWN VOTES BEER IN

13 April 1953

When a county votes beer out and a town then votes in beer, dealers holding unexpired State and town licenses are not required to purchase new licenses.

MUNICIPALITIES; SURRENDER OF CHARTER WHEN SURRENDER COMPLETE;
TITLE OF PROPERTY UPON SURRENDER; POWER TO COLLECT TAXES

13 April 1953

When the charter of a municipality is repealed, in conformity with the provisions of G. S. 160-363, it is thought that such municipality will immediately cease to function as such.

In the cases of WALLACE v. TRUSTEES, 84 N. C. 164 and LILLY v. TAYLOR, 88 N. C. 489, the Supreme Court held that the repeal of a town charter deprives its authorities of the power to levy taxes or to collect taxes already levied and puts an end to process for the enforcement thereof; but money collected and in hand may be controlled by the courts. In UNIVERSITY v. HIGH POINT, 203 N. C. 558, it was held that the General Assembly has authority to deal with property held by a municipal corporation for a public purpose and to provide for its disposition upon the repeal of the municipal charter, and in the absence of such a statutory provision, the property escheats to the State University under the provisions of Article IX, Section 7, of the State Constitution and the statutes enacted pursuant thereto.

PHYSICIANS AND PATIENTS; DUTY RESPECTING CONFIDENTIAL INFORMATION

13 April 1953

There is no law of the State requiring a physician to keep confidential reports on the health of his patients.

MUNICIPAL CORPORATIONS; ORDINANCES; REGULATION OF
POOL AND BILLIARD ROOMS

13 April 1953

Under the provisions of G. S. 160-200(33), a municipality has the power to license, prohibit, and regulate pool and billiard rooms, and in the interest of public morals provide for the revocation of such licenses.

BEER AND WINE; A MUNICIPALITY WITH A POPULATION OF LESS THAN
1000 MAY NOT HOLD AN ELECTION ON THE SALE OF BEER AND WINE

13 April 1953

It is thought that G. S. 18-124(a) forbids a town with a population of less than 1000 to hold a separate election on the question of whether beer and wine may be legally sold within the municipality.

DOUBLE OFFICE HOLDING; TOWNSHIP CONSTABLE; MEMBER OF
DISTRICT SCHOOL COMMITTEE

13 April 1953

The office of township constable and that of membership on a district school committee are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

PROBATE AND REGISTRATION; AUTHORITY OF DEPUTY CLERK TO PROBATE
INSTRUMENTS UNDER G. S. 47-14

13 April 1953

It is thought that a deputy clerk of the Superior Court has authority under G. S. 47-14 to probate deeds and mortgages in his own name. This section was rewritten by Chapter 235, Public Laws of 1899, probably as a result of the decision in *WHITE v. CONNELLY*, 105 N. C. 65, in which the Supreme Court held that a deputy clerk had no such authority under Chapter 161, Public Laws of 1876-77.

CIVIL DEFENSE; AUTHORITY OF THE DIRECTOR OF CIVIL DEFENSE TO ENTER
INTO AGREEMENTS UNDER FEDERAL MATCHING FUNDS PROGRAM FOR
CIVIL DEFENSE

14 April 1953

Under North Carolina statutes, State and local defense agencies may accept Federal matching funds under terms of an agreement requiring that the equipment purchased with such funds shall be made available to critical target cities outside of the State in the event of enemy attack.

MUNICIPALITIES; CREATION; TAX VALUATION OF PROPERTY TO BE
USED IN PETITION

14 April 1953

In filing petition for incorporation of a municipality with the municipal board of control, the petition should use the current tax value of property.

AD VALOREM TAXES; PERSONAL PROPERTY; AGRICULTURAL PRODUCTS
STORAGE; WHEN SUCH PRODUCTS TAXABLE AT 60% OF REGULAR
TAX RATE

14 April

Under the provisions of G. S. 105-294.1, certain tobacco would be at the rate of only 60% of the regular county ad valorem property tax if the following conditions of the statute are met: (1) That the Commissioners determined as a fact that the tobacco in question was by a manufacturer or processor for manufacturing or processing and such tobacco customarily required storage and processing for a period more than one year in order to age or condition it for manufacture; (2) the Board of County Commissioners entered such determination in minutes on or before March 31st.

MUNICIPAL CORPORATIONS; TORT LIABILITY FOR FIRE DEPARTMENT
FIGHTING FIRES OUTSIDE CORPORATE LIMITS

14 April

In *HOWLAND v. ASHEVILLE*, 174 N. C. 749, and *MABE v. STON-SALEM*, 190 N. C. 486, the Supreme Court held that the operation of a municipal fire department is a governmental function and that a municipality is not liable to individuals for injury or damage growing out of the performance of that function, unless expressly made so by statute. Article 3, Chapter 69, of the General Statutes, provides for the State Volunteer Fire Department. G. S. 69-23, a part of Article 3, states that:

"In permitting its fire department or equipment to attend to an emergency or answer a call beyond the municipal limits, whether under the terms of this article or otherwise, a municipality shall not be deemed in exercise of a governmental function, and shall retain the privileges and immunities attendant upon the exercise of such functions within its corporate limits."

If the courts give full effect to the foregoing provision, it will result that a municipality has the same immunity from tort liability while acting outside the municipality as a member of the State Volunteer Fire Department that it has while acting within its corporate limits.

MOTOR VEHICLES; TITLE AND REGISTRATION; DRIVER'S LICENSE
NON-RESIDENCE

15 April

A person who works in North Carolina over a long period of time and lives at the place of employment five days in each week, returning to his family's home in another state on week ends, is a resident of North Carolina within the meaning of the statutes governing the registration of motor vehicles and the procurement of driver's license.

SCHOOLS; SALE OF ABANDONED SCHOOL EQUIPMENT

15 April 1953

Under G. S. 115-86 it would seem that even in the sale of abandoned school equipment the safe course for a board of education to follow is to advertise said property for the period of time and in like manner as to the places and publication in newspapers as prescribed for sales of real estate under deeds of trust, rather than to follow the procedure for the sale of personal property.

BEER AND WINE; AUTHORITY OF COUNTY COMMISSIONERS TO REFUSE TO
ISSUE "ON PREMISES" LICENSE

17 April 1953

When an application for a permit to sell beer is made to the Board of Commissioners, it is the duty of that body to find the facts from the evidence presented in support of the application. When the board in good faith finds that the applicant is entitled under the law to have a license issued to him, it is mandatory that the board issue the license. In the absence of such a finding, it is the duty of the Board of Commissioners to deny the license. It is thought that a board of county commissioners has no authority to adopt an arbitrary rule to the effect that it will issue no more "on premises" licenses to sell beer outside the corporate limits of municipalities within the county. Instead, it is thought that each application must stand on its own footing. G. S. 18-76, 18-72 and 18-77. MCCOTTER v. REEL, 223 N. C. 486.

MUNICIPAL CORPORATIONS; NOMINATION OF CANDIDATES UNDER
PLAN "D"; MUNICIPAL ELECTIONS

17 April 1953

Municipal candidates under Plan D must be nominated in a municipal primary in accordance with the provisions of the statute. G. S. 160-335.

LICENSE TAX; AMUSEMENT PARK; SHUFFLE BOARD COURT;
ARCHERY RANGE

17 April 1953

An archery range and shuffle board court do not constitute an amusement park within the meaning of the license tax statutes, but each is an amusement for which a license must be procured under the section dealing with bagatelle tables, shooting galleries, and other amusements of a like kind. The license tax year begins June 1. An operation beginning between January 1 and June 1 requires the payment of only half the normal tax. An operation beginning or continuing after June 1 requires the payment of the full year's tax. Such operation is subject to the tax if at a permanent location, which means any operation other than one on a day-to-day or similar basis.

LICENSE TAX; PUBLIC ACCOUNTANTS

17 April 1953

A person employed by a firm of public accountants is not required to procure a license or pay a license tax, but the principals must procure a license for which they pay a fee based upon a charge of \$12.50 for each employee engaged in supervising or handling the work of auditing, devising or installing systems of accounts. A secretary or file clerk is not such a person. One whose work involves training or skill of an accountant is such a person.

MUNICIPALITIES; AUTHORITY TO ISSUE BONDS TO MAKE METER
CHARGE FOR RECREATIONAL PURPOSES

17 April 1953

It is doubtful that a municipality has the authority to make a meter charge of 50c per month and use the proceeds of such charge to finance an organized recreational program. While G. S. 160-156 contains a legislative declaration that the establishment and operation of a recreation system is a governmental function and a necessary expense, as defined in Article VII, Section 7, of the State Constitution, our Supreme Court held in the case of PURSER v. LEDBETTER, 227 N. C. 1, that a tax for recreational facilities is for a public purpose yet it is not for a necessary municipal expense within the contemplation of that section of the Constitution. Article 12, Chapter 160 of the General Statutes authorizes municipalities to provide for their inhabitants a system of organized recreation and G. S. 160-163(2) authorizes the levy of an annual tax to finance such a system. Under PURSER v. LEDBETTER, *supra*, such a tax levy must be approved by a referendum vote of the people.

MOTOR VEHICLES; DEALERS'S LICENSE; OTHER BUSINESS

17 April 1953

A dealer's tag may be used by a dealer in transporting any motor vehicle as defined in G. S. 20-38, or in the transportation of repair parts or other merchandise used in servicing such vehicle.

MOTOR VEHICLES; REGISTRATION; FORMER RESIDENT OF ANOTHER STATE

20 April 1953

When the wife of a member of the Armed Services, with his consent, establishes her residence in North Carolina and brings to this State for regular use herein a motor vehicle registered by him in another state where he formerly resided, such vehicle must be registered in North Carolina and North Carolina license plates obtained therefor.

RESTORATION OF CITIZENSHIP; PROCEDURE

20 April 1953

Under G. S. 13-6, it is necessary that affidavits be made by ten reputable citizens who are residents of the county in which the proceedings for the restoration of citizenship is required to be brought.

LICENSE TAX; AUTOMOBILE DEALER; SERVICE STATION; TIRE RECAPPING;
TOURIST CAMP

20 April 1953

A county may levy a license tax upon any person engaged in business as a dealer in motor vehicles, which tax shall be one-fourth of the state tax, except that the county authorities may raise this to a minimum of \$20 if they see fit to do so.

A county may levy a license tax upon a person engaged in the business of selling motor fuel, a person engaged in the business of repairing motor vehicles, or a person engaged in the business of selling tires. The tax may be not more than one-fourth of the state tax and is levied for each location. If two or more of these businesses are conducted at the same location only one tax may be levied.

A county may not levy a tax upon the business of operating a tourist camp or tourist cabins.

AD VALOREM TAXES; QUADRENNIAL ASSESSMENT; SPECIAL TAX

21 April 1953

The making of the quadrennial assessment is a regularly recurring necessary expense of government and is therefore a general expense. A tax levied for that purpose is not a tax levied for a "special purpose" and therefore it, along with all other general expenses, must be paid out of the "general purposes" tax which cannot exceed 20c on the \$100 valuation.

COURT COSTS

21 April 1953

It is not proper to add to the bill of costs a witness fee for a highway patrolman or other police officer who is testifying in a criminal action within the territorial boundaries in which such officer has jurisdiction to make an arrest.

It is not proper to add to the bill of costs any arrest fee for an officer unless there is statutory authority for such fee. In the case of the sheriff an arrest fee may be allowed only in the case of a defendant arrested following an indictment by the grand jury.

MUNICIPAL RECORDER'S COURTS; JURY TRIAL; FEES ALLOWED JURORS

21 April 1953

Fees paid jurors in municipal recorder's courts are controlled by G. S. 7-204.

AD VALOREM TAXES; FOREIGN CORPORATIONS; TANGIBLE PERSONAL
PROPERTY; PLACE OF TAXATION

22 April 1953

If a foreign corporation has no principal office in this State, its tangible personal property may be listed for ad valorem taxation in the county in this State in which such property is situated provided the property has a taxable situs in this State.

MOTOR VEHICLES; DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR;
INHALATION OF ALCOHOL

22 April 1953

A person who is charged with driving under the influence of intoxicating liquor may introduce evidence otherwise competent to show that the alcoholic content of his blood revealed by a blood test is due to his having recently inhaled fumes from shellac.

PHYSICAL THERAPY; NORTH CAROLINA EXAMINING COMMITTEE OF PHYSICAL
THERAPISTS; AUTHORITY OF EXMINING COMMITTEE TO ISSUE
TEMPORARY OR PROVISIONAL REGISTRATION TO QUALIFIED
PERSONS PRIOR TO TAKING EXAMINATION

23 April 1953

The North Carolina Examining Committee of Physical Therapists is authorized to issue temporary or provisional certificates of registration to persons qualified to take the examination until the examination is taken and passed or failed by such persons.

CRIMINAL PROCEDURE; COUNTY RECORDER'S COURTS; AUTHORITY TO
REMIT FORFEITED BONDS

24 April 1953

Construing together G. S. 15-116, G. S. 7-205, G. S. 7-223, it would seem that the Judge of a county recorder's court has the authority to remit the forfeiture of bond in a criminal case even after the proceeds have been paid over to the treasurer of a county school fund.

AD VALOREM TAXES; PERSONAL PROPERTY; THE LEVY AND SALE OF
PERSONAL PROPERTY

24 April 1953

A county tax collector or any other county official charged with the duty of collecting taxes may levy upon personal property for the purpose of selling it for the payment of taxes, but an employee, as distinguished from

a county official may probably not do so even though he is employed for the purpose of calling upon taxpayers in the hope of collecting taxes from them.

LICENSE TAX; AD VALOREM TAX; RAISING CHINCHILLAS

24 April 1953

There is no license tax levied by the state upon a person engaging in the business of raising chinchillas. Profits from such business must be reported for income tax purposes. Animals owned on January 1 must be listed for county and municipal ad valorem taxes.

MOTOR VEHICLES; FOR HIRE LICENSE; TRANSPORTATION OF MAIL

24 April 1953

A vehicle, the sole operation of which in carrying the property of others is limited to the transportation of the United States mail pursuant to a contract with the United States Government, is not a vehicle operated "for hire."

BEER AND WINE; HOURS OF SALE; AUTHORITY OF MUNICIPALITY TO REGULATE CLOSING HOURS

24 April 1953

Construing together G. S. 18-107 and G. S. 18-141, it is thought that a municipality has authority to pass an ordinance requiring places of business where beer is sold to close at 11:30 on Saturday nights and remain closed until Monday mornings, but that a municipality does not have the authority to change the closing hours fixed in G. S. 18-141.

TAX WARRANT; PRIORITY

24 April 1953

A tax warrant issued under Section 913 of the Revenue Act has the effect of an execution upon a judgment of a court of record. When personal property is seized thereunder by the sheriff the lien attaches immediately and prevails over general creditors of the taxpayer. It is subject to a prior recorded mortgage or other lien upon the specific personal property seized.

SCHOOLS; QUALIFICATIONS FOR MEMBERSHIP ON COUNTY BOARDS OF EDUCATION; CHAPTER 1055, SESSION LAWS OF 1951

24 April 1953

Since each General Assembly is sovereign, it is thought that the General Assembly may appoint any qualified resident of the county to member-

ship on a county board of education. Chapter 1055, Session Laws of 1951, provides that in Haywood County candidates for the Board of Education must come from particular districts but they are nominated by a county-wide vote. A person so nominated removed to another district of the county after his nomination and before he was actually appointed by the General Assembly. Since membership on a county board of education is a county-wide office, it is thought that such person is qualified to serve. G. S. 115-37, G. S. 115-38 and G. S. 115-43.

• MUNICIPAL ELECTIONS; FILLING VACANCIES AMONG CANDIDATES

27 April 1953

Construing G. S. 163-119, G. S. 163-50, G. S. 163-148 and G. S. 163-145, it is thought that a person who changed his party affiliation from Democrat to Republican on the registration books during the registration period prior to the primary, is now eligible to take the place of a Republican nominee who has resigned after the primary and before the general election. Such person could not have qualified originally as a candidate in the city election of Hendersonville because Section 2 of Chapter 1128, Session Laws of 1951, requires candidates to file written notices of their intention to be candidates at least ten days prior to the opening of the registration books.

ELECTIONS; WRITE-IN VOTES IN MUNICIPAL ELECTIONS

27 April 1953

Construing together G. S. 163-148 and G. S. 163-175(3), it is thought that write-in votes may be counted in municipal elections. However, no stickers may be used.

CONSTITUTIONAL LAW; LOCAL PRIVATE OR SPECIAL ACTS REGULATING
LABOR, TRADE, MINING OR MANUFACTURING

27 April 1953

Because of the prohibition contained in Article II, Section 29, of the State Constitution, it is thought that a local act applicable to one county only, attempting to exempt such county from the operation of Article 10, Chapter 95, of the General Statutes, would be invalid as a local act regulating labor, trade, mining or manufacturing.

MUNICIPAL CORPORATIONS; EXTENSION OF CORPORATE LIMITS; ELECTIONS
CONDUCTED BY COUNTY BOARD OF ELECTIONS

27 April 1953

Under the provisions of Article 36 of Chapter 160 of the General Statutes, all elections called upon the question of the extension of the corporate limits of a municipality are conducted by the county board of elections wherein such municipality is situated.

WEAPONS; CARRYING WEAPONS CONCEALED

27 April 1953

It is not unlawful to carry a pistol on a hunting or fishing trip or to a pistol range. It is unlawful, however, to carry a pistol concealed about one's person. If the pistol is carried openly and where it can plainly be seen, such action is not unlawful.

SCHOOLS; MINUTES OF BOARDS OF EDUCATION AND SCHOOL COMMITTEES;
PUBLIC RECORDS

27 April 1953

Construing together G. S. 115-133, G. S. 115-44, G. S. 132-1 and G. S. 132-6, it is thought that minutes of the county boards of education and of district school committees are public records open to public inspection at all reasonable times under the supervision of the secretary of the board.

MUNICIPALITIES; CONDEMNATION PROCEEDINGS; CONDEMNATION OF PROPERTY
IN PUBLIC USE FOR SEWERAGE DISPOSAL PLANT

28 April 1953

Property owned and used by a county board of education for school building purposes cannot be condemned for municipal sewerage disposal purposes. Publicly owned property may be condemned by a municipality for a sewerage disposal plant if such property is not actually in use for a public purpose and the use of such property will not interfere with the public purpose for which it is held.

LENOIR COUNTY \$465,000 COUNTY HOSPITAL BONDS

29 April 1953

Where the delivery of county bonds has been delayed from April 29, 1952 until the present time on account of litigation involving the validity of the bonds, the purchaser of these bonds could not be compelled to accept delivery of the bonds after this long delay, without fault on the purchaser's part, and particularly in view of the greatly increased interest rates on municipal bonds during this period. The deposit made by the purchaser at the time of bidding for these bonds could be legally refunded, with approval of the local governing body.

OPTOMETRISTS; SALE OF COMPLETE SPECTACLES BY MERCHANTS

29 April 1953

There is nothing in the statute prohibiting merchants from selling complete glasses. While a merchant can probably not give advice as to the

proper glasses and cannot use a reading chart for that purpose, the statute does not prohibit the merchant having such a chart in his place of business so long as he does not give advice.

FINANCIAL RESPONSIBILITY ACT; NECESSITY FOR FILING PROOF; SUSPENSION
FOR TRANSPORTING ILLEGAL LIQUOR

30 April 1953

One whose license has been suspended for transporting liquor illegally must file proof of financial responsibility before the license can be re-issued.

MUNICIPAL ELECTIONS; QUALIFICATION OF ELECTORS; POLL HOLDERS

1 May 1953

Under the provisions of G. S. 163-25, in order to be eligible to vote in an election district, a person must have resided in the district for a period of four months next preceding the election.

There is no legal prohibition against the brother of a candidate serving as a poll holder.

MUNICIPAL ELECTIONS; RUN-OFF ELECTIONS

1 May 1953

Since there is no provision in the general law for a primary or nominating convention in municipalities, in the absence of charter provisions to the contrary, it is thought any qualified citizen may simply announce himself as a candidate for mayor or alderman and notify the Board of Elections in sufficient time to get his name printed on the ballot.

Since there is no statutory provision for run-off elections in municipalities, it is thought that when there are three candidates for mayor, the person receiving the highest number of votes should be declared elected. In case two candidates should receive the same number of votes, the result is determined by lot as provided in G. S. 160-50.

MUNICIPALITIES; ISSUANCE OF REVENUE BONDS FOR A MUNICIPALLY
OWNED HOTEL

1 May 1953

Revenue bonds cannot be issued for repair of a hotel owned by a municipality, as the Revenue Bond Act of 1938 does not authorize revenue bonds to be issued for this purpose. A municipal hotel is not a public purpose and this also would prevent any type of bonds being issued for this purpose. NASH v. TARBORO, 227 N. C. 283.

PROBATE AND REGISTRATION; SUFFICIENCY OF CERTIFICATE OF
OFFICER BEFORE WHOM DEED IS ACKNOWLEDGED

4 May 1953

Upon the authority of *BROWN v. HUTCHINSON*, 155 N. C. 205, it is thought that a Clerk of the Superior Court is justified in ordering recorded a deed in which the certificate of acknowledgment attached bears the signature of the Justice of Peace, before whom acknowledged, at the beginning of the certificate and not at the end thereof.

LICENSE TAX; AUTOMOBILE DEALER; SERVICE STATION;
TIRE RECAPPING; SECTION 153

4 May 1953

Where a motor vehicle dealer engages also in the business of selling motor fuels, recapping tires and servicing motor vehicles, all of which activities he conducts at the same place, only the motor vehicle dealer license tax should be collected by the State and the county.

MUNICIPALITIES; CONSTRUCTION OF CURBS AND GUTTERS ON STATE-MAINTAINED HIGHWAYS; USE OF POWELL BILL FUNDS; ASSESSMENT
AGAINST ABUTTING PROPERTY OWNERS

4 May 1953

A municipality may spend Powell Bill funds and other available funds for the construction of curbs and gutters along a State-maintained highway and reimburse itself pro tanto for such construction by assessments against abutting property owners, as authorized by municipal charter.

NAME; CHANGE OF NAME; ADOPTION LAW; RESIDENCE

4 May 1953

Chapter 101 of the General Statutes, relating to change of name, does not require the petitioner to be a resident of the State.

MOTOR VEHICLES; MUNICIPAL CORPORATIONS; LICENSE PLATES

6 May 1953

A motor vehicle which is customarily garaged in a town when not in use is "resident" within the town within the meaning of the statute permitting a municipality to require the purchase and display of a license tag upon motor vehicles resident therein. This applies to vehicles owned by a common carrier and also vehicles owned by a corporation and used by its salesman, as well as to other motor vehicles.

AD VALOREM TAXES; SALE OF TAX LIEN; PRIOR YEARS

6 May 1953

When a tax lien is sold by a city, liens for prior years may be included in the sale and in the certificate issued to the purchaser.

AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY; PROPERTY PURCHASED BY WORLD WAR I VETERAN WITH BONUS MONEY

6 May 1953

Real property purchased with money received as a bonus paid to World War I veterans is not exempt from ad valorem property taxation.

LICENSE TAX; LAUNDRIES; SECTION 150; MACHINES OPERATED BY TENANTS

6 May 1953

A landlord who maintains coin operated washing machines in the basement of his apartment house for use by his tenants is engaged in the business of operating a laundry and subject to the license tax therefor.

SCHOOLS; LOCAL BUDGETS; SALARIES OF ADDITIONAL MUSIC TEACHERS

6 May 1953

It is thought that if a county wishes to include in its school budget an item to pay music teachers in excess of the State allotment, ad valorem tax funds may not be used for that purpose unless authorized by an election called under the provisions of G. S. 115-361. However, non tax funds, such as ABC funds, or the County's part of the State beer tax, may be used for such purpose.

SALES AND USE TAX; EXEMPTIONS; HOUSING AUTHORITIES

7 May 1953

If a housing authority is organized under the North Carolina Housing Authorities Law, state sales and use taxes do not apply to building materials purchased by contractors for use in construction work for such housing authority.

BEER AND WINE LICENSE; ISSUANCE FOR LESS THAN ONE YEAR

8 May 1953

It is thought that the beer and wine license tax provided for in G. S. 18-74 may not be prorated over a period of less than one year and that the license may not be issued without the payment of the full amount of the annual license tax.

GENERAL MUNICIPAL ELECTIONS; RUN-OFF ELECTIONS

12 May 1953

There is no provision for a run-off election following a general election where there are several candidates for office, neither of which received a majority of the total votes cast. You are further advised that the candidate receiving the highest number of votes at a general municipal election would be entitled to the office.

MUNICIPAL CORPORATIONS; ELECTIONS; RESIDENCE REQUIREMENTS

12 May 1953

In order to qualify as a town official, a person must be a resident of the State for a period of one year and a resident of the town for a period of four months next preceding the date of the election.

AD VALOREM TAXATION; ATTACHMENT AND GARNISHMENT; RENTALS

13 May 1953

A garnishment of rents for local taxes owed by a landlord does not affect the lessee's leasehold rights.

SCHOOLS; CONTRACT; LIABILITY OF BOARD OF TRUSTEES OF CITY ADMINISTRATIVE UNIT; BOARD OF TRUSTEES NOT A CORPORATION

13 May 1953

Reasoning by analogy from what is said in *KIRBY v. BOARD OF EDUCATION*, 230 N. C. 619, it is thought that an action may be maintained against the trustees of a city administrative unit upon a contract made by such board with an architect.

Since the board of trustees of a city administrative unit is not a corporation, it is thought that action must be brought against the individual members of the board, but any judgment obtained would be against the trustees in their official capacity and not as individuals. See also G. S. 115-84, G. S. 115-85 and G. S. 115-88.

SCHOOLS; USE OF FINES AND FORFEITURES TO PROVIDE ADDITIONAL TEACHERS UNDER CHAPTER 1151, SESSION LAWS OF 1953

13 May 1953

Because of the language of G. S. 115-356, it is thought that the proceeds of fines, forfeitures, poll taxes and dog taxes may not be used to supply the extra teacher when it is decided not to consolidate a small high school, under Chapter 1151, Session Laws of 1953.

SCHOOLS; CONSTRUCTION OF CHAPTER 1151, SESSION LAWS OF 1953

13 May 1953

It is thought that it was not the legislative intent in enacting H. B. 1023, Chapter 1151, Session Laws of 1953 to authorize the use of license taxes collected under Schedule B to supply the extra teacher in small schools allowed to operate under the terms of the Act.

It is also thought that funds allocated to counties under subsection (t) of G. S. 18-81 may be used for such purposes because this statute provides that such funds may be used as any other general or surplus funds of the county may be used.

Because of the language of G. S. 115-356, it is thought that fines, forfeitures, poll taxes and dog taxes may not be used for supplying the extra teachers.

ABC LAWS; ELECTIONS; TIME OF

13 May 1953

ABC elections held under G. S. 18-61 may be held at any reasonable time determined by the county board of elections, subject to the express prohibitions contained in the statute.

SALARIES AND FEES; RETROACTIVE PAY OF STATE EMPLOYEES

13 May 1953

The retroactive pay provisions of the 1953 Appropriation Act do not provide for withholding of any portion of this pay for retirement purposes. These increased salary provisions for the fiscal year 1952-53 will not be taken into consideration in determining the retirement pay status of a State employee for this period.

ELECTION LAWS; QUALIFICATION OF PUBLIC OFFICERS

13 May 1953

It is not necessary for a person to be the owner of real or personal property in order to qualify himself to hold public office.

DOUBLE OFFICE HOLDING; MEMBER OF LOCAL SCHOOL COMMITTEE AND
MEMBER OF COUNCIL OF THE NORTH CAROLINA STATE BAR

13 May 1953

The office of membership on a local school committee and that of being a Councilor of the North Carolina State Bar are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both these offices at the same time.

SCHOOLS; USE OF FINES AND FORFEITURES TO PROVIDE ADDITIONAL TEACHERS
UNDER CHAPTER 1151, SESSION LAWS OF 1953

13 May 1953

Since the allotment of teachers to be paid from State funds is based upon average daily attendance for the preceding year, it is thought that when a high school that has previously been consolidated is reopened, the extra teacher will be paid from State funds provided the average daily attendance of pupils making up the schools was sixty or more for the preceding year; if under sixty the additional teacher must be paid for the first year from local funds. If during that first year the average daily attendance should be sixty or more, the State would pay the additional teacher for the next year.

COURT COSTS; WITNESS FEES TO POLICE OFFICERS; ARREST FEES

14 May 1953

Chapter 890 of the Session Laws of 1951 relating to arrest fees in Wake County fixes the amount of the fee but does not provide when the fee is properly charged and properly made a part of the bill of costs.

SCHEDULE B, SECTION 130½; DISPENSING CIGARETTE VENDING MACHINE

14 May 1953

A person who purchases and installs a cigarette vending machine in his own place of business is subject to a tax therefor by the county under G. S. 105-65.1.

SCHEDULE B, SECTION 137; DISTRIBUTOR OF GASOLINE AND FUEL OIL;
MUNICIPAL LICENSE TAX

14 May 1953

A municipality may levy a license tax upon a distributor of gasoline and fuel oil if, but only if, such distributor has in the municipality an agency, station, or warehouse for the distribution of such commodity.

GROUP LIFE INSURANCE; HEALTH AND ACCIDENT INSURANCE;
ELIGIBILITY OF EMPLOYEES OF COUNTIES TO PURCHASE
GROUP LIFE, HEALTH AND ACCIDENT INSURANCE

14 May 1953

There is no authority at the present time for your Board of County Commissioners to provide group life and hospital insurance for County employees and pay a part of the cost of the same out of public funds.

ARREST FEES; STATE HIGHWAY PATROLMEN

14 May 1953

Arrest fees or fees for service of process on account of official acts of the members of the State Highway Patrol are required to be paid into the general fund of the county in which said cost is taxed. There appears to be no provision for arrest fees for game protectors. However, it is understood that the practice of taxing arrest fees for game protectors has customarily been followed throughout the State.

(1) COUNTIES AND COUNTY COMMISSIONERS; AUTHORITY OF COUNTY TO PURCHASE PROPERTY TO BE DEEDED TO THE STATE FOR HIGHWAY PATROL USE

(2) REGULAR AND SPECIAL MEETINGS OF THE BOARD

15 May 1953

A board of county commissioners may, within the limits prescribed by the Constitution, levy taxes and use the proceeds of taxes to purchase land which it will lease or deed to the State Highway Patrol for the construction of a patrol and radio broadcasting station, provided such station may also be used by county law enforcement officers for law enforcement purposes.

A board of county commissioners must meet in a regular, adjourned, or special meeting called as provided in G. S. 153-8 before it can legally transact business of the county. O'NEAL v. WAKE COUNTY, 196 N. C. 184.

SCHOOLS; SUPPLEMENTARY TAX; LOCAL BUDGET

15 May 1953

A supplemental tax voted in conformity with the provisions of G. S. 115-361 cannot be levied without the approval of tax levying authorities of the county and the State Board of Education. However, the State Board of Education examines a local budget for financial soundness only. G. S. 115-363(a).

SCHOOLS; AUTHORITY COUNTY SUPERINTENDENT AND COUNTY BOARD OF EDUCATION TO REJECT TEACHERS

15 May 1953

Under the language of G. S. 115-359 and the decision in BOARD OF EDUCATION v. DICKSON, 235 N. C. 359, it is thought that a teacher already in service may not be dismissed by action of the county superintendent and the county board of education, without action having been taken by the local school committee.

COURTS; TERRITORIAL JURISDICTION OF MAYOR'S COURT

18 May 1953

The Charter of the Town of Fountain, Chapter 115, Private Laws of 1903, provides that the town shall be subject to all the provisions of Chap-

ter 62 of the Code (now Chapter 160 of the General Statutes) not inconsistent with said Act.

G. S. 160-13 gives to Mayors of incorporated towns criminal jurisdiction of offenses committed within the corporate limits. Chapter 398, Session Laws of 1951, gives to Police Officers of the Town of Fountain authority to make arrest within one mile of the corporate limits of said town. It is thought that this Act cannot have the effect of extending the territorial jurisdiction of the Mayor's Court of the Town of Fountain.

**MOTOR VEHICLES; FAILURE TO YIELD RIGHT OF WAY; RECKLESS DRIVING;
JURISDICTION OF THE JUSTICE OF THE PEACE**

19 May 1953

The offense of reckless driving is not within the jurisdiction of a justice of the peace. The offense of failure to yield the right of way is within the jurisdiction of a justice of the peace. The offense of failure to stop at an intersection at which a STOP sign has been posted is within the jurisdiction of a justice of the peace.

The offense of reckless driving is not proved merely by showing an accident which is the fault of the defendant. The driver of a vehicle who comes to a stop at an intersection governed by a STOP sign and then proceeds into the intersection in front of another vehicle approaching on the other highway is not guilty of violating the statute requiring him to stop at such intersection. If he is guilty of any criminal offense it is the offense of reckless driving.

SCHOOLS; SUPPLEMENTARY TAX; LOCAL BUDGET

19 May 1953

G. S. 105-374 provides that county and district taxes shall be collected by the sheriffs or tax collectors as provided by law. Under this section it is thought that in the absence of a special statute the county tax authorities are not authorized to charge a city administrative unit a fee for collecting special school taxes. G. S. 115-363(a) provides that the tax levying authorities may approve or disapprove supplemental school budgets in whole or in part and upon approval being given, the same shall be submitted to the State Board of Education which shall have authority to approve or disapprove the same as to financial soundness. Under this section it is thought that it is mandatory that the Board of Trustees of a city administrative school unit submit its local supplementary budget to both the county commissioners and the State Board of Education for approval.

Under authority of *SCHOOL TRUSTEES v. BENNER*, 222 N. C. 566, it is thought that the county commissioners and county accountant must pay to the treasurer of a city administrative unit monthly all funds collected from a special tax levy. However, a city administrative unit may not expend such funds beyond the amount of its approved budget. Any surplus will simply be taken into consideration in making the budget for the next fiscal year.

The county commissioners have the responsibility and the duty to pass upon local supplement budgets for city administrative units and to fix the tax rate not to exceed that voted by the people under the provisions of G. S. 115-361.

TEACHERS AND STATE EMPLOYEES RETIREMENT SYSTEM;
COMPULSORY RETIREMENT

19 May 1953

Under the provisions of G. S. 135-5, subsections (b) and (c), it is thought that a county board of education or a board of trustees of a city administrative unit have no authority to establish a compulsory retirement age at any point between 60 and 65. G. S. 135-5 (1-a) provides that a person coming under the retirement system, who has attained the age of 60 years, may retire upon a written application to the board of trustees, setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing said notice, he desires to retire. It would seem that only persons covered by this subsection are required to give to the board of trustees notice of their desire to retire.

In the case of teachers, it is thought that G. S. 135-5(1-b) refers to the end of the school year.

It is doubtful that a county or city administrative school unit has authority to set up its own supplementary retirement system in the absence of special legislation authorizing the same.

COUNTY FIRE DEPARTMENT; RIGHT OF COUNTY TO PAY FOR COST OF
USE OF CITY HYDRANTS

20 May 1953

Counties have a right to establish paid fire departments and to levy special taxes therefor and to provide necessary equipment for the operation of such fire departments. This may include the right of the county to pay for connection with hydrants outside of the corporate limits of the municipality when such are available at a reasonable cost.

EXECUTORS AND ADMINISTRATORS BOND; COMMISSIONS
AND COSTS OF ADMINISTRATION

20 May 1953

Since there is no exception noted in the statute (G. S. 28-34), it would seem that an administrator is required to make bond when the only asset of the estate is the right to bring an action for wrongful death. The amount of the bond is in the sound discretion of the clerk, being simply an amount sufficient to guarantee the faithful execution of the trust and obedience to all lawful orders of the court. Upon the authority of *BAKER v. RAILROAD*, 91 N. C. 308, it would seem that the administrator and clerk are entitled to their usual fees and commissions out of the recovery in an action for wrongful death.

FERTILIZER LICENSES; AUTHORITY OF TOWN TO LEVY

21 May 1953

Towns may levy reasonable license taxes on fertilizer dealers within the limits of the general enabling statute.

MOTOR VEHICLES; MUNICIPALITIES; "YIELD RIGHT OF WAY" SIGNS

21 May 1953

A city may not enforce an ordinance requiring obedience to a "Yield right of way" sign where such ordinance establishes a rule as to right of way inconsistent with that established in G. S. 20-155.

CRIMINAL LAW; KIDNAPING

21 May 1953

The immunity in the kidnaping statute which is granted to a father or mother is personal and does not apply to an agent of the father or mother who is no relation to the child.

SCHOOLS; CURRENT EXPENSE BUDGET; TRANSFER TO CAPITAL OUTLAY BUDGET

21 May 1953

Because of the provisions of G. S. 115-361, G. S. 115-356, G. S. 115-83 and G. S. 153-124, it is thought that funds may not be transferred from the current expense school budget to the capital outlay budget. However, if there is a surplus in the current expense fund at the end of the fiscal year, that fact may be taken into consideration in making both budgets for the next fiscal year. In that way it may be possible to reduce the tax rate for the supplemental levy voted under G. S. 115-361 and justify the commissioners in approving a capital outlay budget in an amount equal to or exceeding the amount of the surplus in the current expense fund.

CONSTITUTIONAL AMENDMENT; INCREASING THE GENERAL FUND
TAX LIMITATION TO 20 CENTS; EFFECTIVE DATE

21 May 1953

The constitutional debt limitation of 20 cents on the \$100 of property valuation, imposed by the 1951 General Assembly, was adopted by the voters at the general election in 1952 and has been certified by the Governor to the Secretary of State. It is now in full effect.

MOTOR VEHICLES; DRIVER'S LICENSE; SUSPENSION FOR RECKLESS
DRIVING AND SPEEDING

22 May 1953

The statute authorizing the Department of Motor Vehicles to suspend the operator's license of one who has been convicted on a charge of reckless driving and on a charge of speeding in excess of 55 miles per hour does not apply where the reckless driving and the speeding were parts of the same act of driving.

MOTOR VEHICLES; CHAUFFEUR'S LICENSE; EXPIRATION AND RENEWAL

22 May 1953

No person may be convicted after April 20, 1953, of operating a motor vehicle without an operator's or chauffeur's license if at the time of the offense with which he is charged his operator's or chauffeur's license had expired and he produces in court at the time of his trial an operator's or chauffeur's license issued to him within 30 days after the expiration of his prior license and which would have been a defense to the charge had it been issued prior to the time of the alleged offense.

JUSTICES OF THE PEACE; TRIAL ON SUNDAYS OR HOLIDAYS; REMOVAL OF
CAUSES; FIXING BOND; JUSTIFICATION OF BOND

22 May 1953

Our Supreme Court has held that in special cases of necessity the courts may sit on Sunday. *STATE v. RICKETTS*, 74 N. C. 187; *STATE v. MCGIMSEY*, 80 N. C. 377 and *STATE v. HOWARD*, 82 N. C. 623. However, it is doubtful that the Supreme Court would approve the holding of a trial for a minor traffic violation on Sunday. G. S. 103-4 contains the list of public holidays in North Carolina. S. B. 141 of the 1953 session repeals in its entirety G. S. 103-3. After that date it will be legal to serve civil process in North Carolina on Sunday. G. S. 7-147 provides that a case may be removed from one justice of the peace to another, but only one time. G. S. 15-108 provides that the sheriff may take bail of a prisoner in custody and G. S. 1-479 provides that the sheriff can take a bond of the defendant in claim and delivery proceedings. However, it is thought that the justification of sureties on either a criminal or civil bond, must be before a judicial officer and not before the sheriff.

JUSTICES OF THE PEACE; HOLDING COURT OUTSIDE OF THE TOWNSHIP

22 May 1953

G. S. 7-127 authorizes a justice of the peace to issue summons or other process anywhere in his county, but specifically provides that he shall not be compelled to try a cause outside of the township for which he was elected or appointed. *DAVIS v. SANDERLIN*, 119 N. C. 84.

INTOXICATING LIQUOR; DISPOSAL OF VEHICLE CONTAINING PARAPHERNALIA
USED IN MAKING LIQUOR

22 May 1953

A vehicle seized, which does not actually contain intoxicating liquor, may not be sold pursuant to the provisions of G. S. 18-6.

INTOXICATING LIQUOR; CONFISCATION OF VEHICLES

22 May 1953

Under the provisions of G. S. 18-6, it is doubtful that a vehicle at the site of an illegal whiskey distillery can be confiscated when the same is not actually being used in the illegal transportation of liquor.

ALCOHOLIC BEVERAGES; USE AND SALE IN CLUBS

22 May 1953

Under the provisions of G. S. 18-15 it is thought that it is illegal for clubs and their members to possess and sell beer, wine and hard liquors in a county in which the sale of beer and wine has been voted out in a county-wide election called under the provisions of Article 11, Chapter 18 of the General Statutes.

INTOXICATING LIQUORS; BEER; CONFISCATION

22 May 1953

The term "tax-paid liquor" as used in G. S. 18-6 would seem to include beer; G. S. 18-1(1). Under the provisions of G. S. 18-48, G. S. 18-49 and G. S. 18-58, it is thought that liquor on which taxes have been legally paid in another State may be confiscated in North Carolina only when it is illegal to transport or possess such beverages in this State.

COSTS; STENOGRAPHER'S FEE; CONSENT JUDGMENT CASES

22 May 1953

A stenographer's fee of \$5.00 taxed by the Clerk when no jury is impaneled is without statutory authority.

SCHOOLS; AUTHORITY COUNTY SUPERINTENDENT AND COUNTY BOARD OF
EDUCATION TO REJECT TEACHERS

25 May 1953

Under the language of G. S. 115-359 and the decision in BOARD OF EDUCATION v. DICKSON, 235 N. C. 359, it is thought that a teacher already in service may not be dismissed by action of the county superintendent and the county board of education, without action having been taken by the local school committee.

STATE PORTS AUTHORITY; PLEDGING OF NET REVENUES FROM OPERATION
OF PORTS TO SECURE REVENUE BONDS

25 May 1953

Under the State Ports Bond Act, the net revenues from the operation of the port facilities provided by bond funds are committed to the payment of these bonds, after reserving an amount deemed necessary by the Authority for operating capital and for making proper and desirable enlargements, extensions and other improvements. These funds cannot be committed for the payment of revenue bonds for the construction of other facilities.

MAYOR OF YADKINVILLE; COMPENSATION

25 May 1953

The town commissioners of the Town of Yadkinville have the authority to allow and fix the compensation or salary of the Mayor, and to change the times for the regular meetings of the commission.

COUNTY COMMISSIONERS; SALARY INCREASES UNDER CHAPTER 1165,
SESSION LAWS OF 1953

25 May 1953

It is thought that the provisions of Sections 21 and 23 of Chapter 1165, Session Laws of 1953, apply only to the State's part of the salaries of employees paid partly by State funds and partly by local funds. Therefore, it is not mandatory that a county increase its part of the salaries of such employees.

AD VALOREM TAXATION; MAUSOLEUM PARTIALLY HELD FOR SALE

25 May 1953

When part of a mausoleum is being held for purposes of sale, that part is subject to county ad valorem taxation.

WILDLIFE COMMISSION; RESIDENCE REQUIRED FOR COUNTY FISHING LICENSE

26 May 1953

In order to acquire a resident county fishing license, it is necessary for such person to have lived in the county for six months next preceding the application for the license.

COMMISSIONER OF PUBLIC TRUST; MEMBER OF BOARD OF TOWN
COMMISSIONERS; CONTRACTS IN WHICH DIRECTLY OR
INDIRECTLY INTERESTED

26 May 1953

An executive officer of a corporation who is also a stockholder and a member of the board of commissioners of the town is prohibited by G. S.

14-234 from being interested in contracts between the town and the corporation of which he is an officer. It is not thought that this would apply to a member of the board of commissioners of a town who is merely a stockholder and has no executive position in a corporation.

JUSTICE OF THE PEACE; REMOVAL OF CAUSE; COUNTY RECORDER'S COURT
INSTEAD OF ANOTHER JUSTICE

26 May 1953

Under G. S. 7-224 a justice of the peace on a preliminary hearing upon request for removal can send the case to the recorder's court.

DEPARTMENT OF PUBLIC WELFARE; OLD AGE ASSISTANCE LIEN;
FORECLOSURE

26 May 1953

The old age assistance lien is to be foreclosed in a regular action at law, and an administrator should be appointed for that purpose.

JUSTICES OF THE PEACE; QUALIFICATION; MORE THAN THIRTY DAYS
AFTER APPOINTMENT BY THE GOVERNOR

26 May 1953

It would seem that the provision of G. S. 7-114, making void an election of a justice of the peace by the General Assembly or by the people, unless such person qualifies within thirty days, does not apply to a justice of the peace appointed by the Governor under the provisions of G. S. 7-115. Therefore, it is thought that such person may qualify even though a period of more than thirty days have elapsed since his appointment by the Governor. GILMER v. HOLTON, 98 N. C. 26.

PRIVATE DETECTIVES; CARRYING WEAPONS

27 May 1953

In order to engage in the business of being a private detective in this State, a person must pay to the Commissioner of Revenue, Raleigh, North Carolina, an annual license tax in the amount of \$25.00.

Private detectives are not permitted to engage in the business of a collection agency. Private detectives are not permitted to go armed in a body. There is no provision for a private detective to secure a State or county license to carry a pistol. A private detective does not have the power of arrest nor may such private detective carry a weapon concealed about his person.

JUSTICES OF THE PEACE; ADVANCE PAYMENT OF FEES IN CRIMINAL CASES

27 May 1953

In the absence of a Public-Local Act there is no legal authority for charging a removal fee on the part of the justice of the peace in a

criminal case, since under the Constitution the defendant is not liable for costs until he is convicted.

MUNICIPALITIES; IMPROVEMENT OF CITY STREETS IN COOPERATION WITH
THE STATE HIGHWAY COMMISSION; ASSESSMENT OF BENEFITS OF
CITIES' COSTS AGAINST ABUTTING PROPERTY

27 May 1953

Municipalities are authorized to assess against abutting property one-half of the costs of local improvements and a larger amount if requested in the petition asking for such improvements

PRIVILEGE OF ORGANIZED MILITIA; LEAVES OF ABSENCE FOR STATE
OFFICERS AND EMPLOYEES

27 May 1953

Under G. S. 127-83, all officers and employees of the State who are members of the National Guard are entitled to leaves of absence from their respective duties without loss of pay, time or efficiency rating on all days during which they shall be engaged in field or coast defense training ordered or authorized by law or as may be directed by the President of the United States.

1. CONSTABLE; AUTHORITY TO SERVE PROCESS ANYWHERE IN
RUTHERFORD COUNTY;

2. POWER OF SUPERIOR COURT JUDGE TO REMOVE CONSTABLE
FOR CAUSE

27 May 1953

Under G. S. 151-7 a township constable has county-wide authority. STATE v. CORPENING, 207 N. C. 805 and TAYLOR v. WAKE FOREST, 228 N. C. 346. North Carolina Constitution, Article IV, Section 24. However, as to Rutherford and Henderson Counties, Chapter 364, Public Laws of 1941 amends G. S. 151-7 to provide that in Rutherford and Henderson Counties a constable has jurisdiction only in the township from which he is elected.

G. S. 128-16 and succeeding sections provide machinery for the removal from office of township constables and certain other officials for the causes enumerated in the statute. Power to remove is vested in a Superior Court Judge and the procedure is set out in succeeding sections of Chapter 128.

SCHOOLS; SALE OF ABANDONED SCHOOL PROPERTY; CONDITIONS SUBSEQUENT

28 May 1953

"A clause in a deed will not be construed as a condition subsequent unless it expresses in apt and appropriate language the intention of the parties to this effect and a mere statement of the purpose for which the

property is to be used is not sufficient to create such a condition." *HALL v. QUINN*, 190 N. C. 326; *ST. JAMES CHURCH v. BAGLEY*, 138 N. C. 384; *GRACE CHURCH v. ANGE*, 161 N. C. 315; *GOLD v. COZART*, 173 N. C. 612; *SHIELDS v. HARRIS*, 190 N. C. 520; *CHURCH v. REFINING COMPANY*, 200 N. C. 469; *SHAW UNIVERSITY v. INSURANCE COMPANY*, 230 N. C. 526.

From the foregoing it is thought that a deed to a school board, stipulating in both the granting clause and the habendum clause, that the property is conveyed "for school purposes and no other," conveys a fee simple estate.

COUNTIES; INCREASED SALARIES OF COUNTY EMPLOYEES

28 May 1953

A county may provide for the increase in salaries of county officers and employees for the fiscal year beginning July 1, 1953, subject to Constitutional and statutory limitations. Retroactive salaries for county officers and employees cannot be paid in the absence of a statute authorizing such pay increases.

AD VALOREM TAXATION; TAX SUPERVISOR; NO AUTHORITY TO APPOINT ASSISTANT SUPERVISOR

28 May 1953

You inquire whether the Board of County Commissioners has authority under the general law to appoint an Assistant or Deputy Tax Supervisor to perform the duties of the Tax Supervisor when the Tax Supervisor is not available.

Under the provisions of G. S. 105-291, the Board of County Commissioners, at the request of the Tax Supervisor, may employ experts to assist the Supervisor. Under the provisions of G. S. 105-292, the County Commissioners may, in their discretion, upon recommendation of the Supervisor, employ such clerical assistants as the Supervisor deems necessary. Inasmuch as the position of Tax Supervisor is specially created, and specific duties are imposed upon him by law, I do not think that a Board of County Commissioners, in the absence of specific legislative authority, would be authorized to appoint an Assistant or Deputy Tax Supervisor to perform the Supervisor's duties when the Supervisor is not available. The only relief under the general law must be found in that provided by the two sections above referred to and those duties imposed under the Tax Supervisor must be performed by him with such assistance as may be furnished him pursuant to the statutes above referred to.

AD VALOREM TAXATION; FAILURE TO LIST FOR TAXES; CRIMINAL PROSECUTION; PRESENTING NAMES TO GRAND JURY NOT A PREREQUISITE

28 May 1953

Presentation by the Board of County Commissioners to the grand jury of the names of those failing to list for taxes is not a prerequisite to criminal prosecution.

INCOME TAX; GROSS INCOME; INCOME EARNED ON MILITARY
RESERVATION; BUCK ACT

29 May 1953

Since the enactment of Section 106 of Title 4 of the U. S. Code, a person is not relieved from liability for State income tax by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area.

(1) AD VALOREM TAXATION; TAX LIENS; FEE FOR SALE

(2) AD VALOREM TAXATION; PERSONAL PROPERTY;
PLACE OF LISTING; CONSIGNEE

29 May 1953

Merchandise in the possession of a consignee must be listed for ad valorem property taxation in the county where the merchandise is kept or stored irrespective of whether the owner is a resident of such county.

PUBLIC WELFARE; EXPENDITURE OF WELFARE FUNDS; FUNDS DERIVED
FROM CURRITUCK RACING COMMISSION

29 May 1953

Under the Currituck Racing Commission Act 25% of the net proceeds must be paid into the County Welfare Fund. This money must be spent entirely for welfare purposes and is to be budgeted and appropriated only for such purposes. After the budget is approved and the money appropriated the Welfare Department controls the expenditure just the same as if the funds had been budgeted and appropriated from tax funds.

PLEA OF NOLO CONTENDERE ENTERED IN FELONY CASE;
LOSS OF CITIZENSHIP

29 May 1953

The plea of nolo contendere entered in a felony case does not prevent such person from losing citizenship, because loss of citizenship is an effect or consequence of the same criminal proceeding in which the plea was entered.

PROBATION; REFUSAL OF JUDGE TO REVOKE PROBATION;
SUBSEQUENT ADJUDICATION

29 May 1953

When a Superior Court Judge has once passed upon an application for revocation of probation and has refused to make a revocation, the matter cannot legally be determined or presented to another Superior Court Judge upon the same identical grounds or reasons.

PROBATE AND REGISTRATION; NOTARIES PUBLIC; NECESSITY FOR
OFFICIAL SEAL

29 May 1953

From the language used in the case of *DEANS v. PATE*, 114 N. C. 194, it would seem that a notary public may adopt any symbol he chooses as his seal. When a notary who takes an acknowledgment fails to affix his seal but uses a rubber stamp carrying a registration number, the language of the certificate should be examined to determine whether the rubber stamp has been adopted as the seal of the notary. Various validating statutes for cases in which a seal has been omitted are: G. S. 47-52, G. S. 47-102, G. S. 47-53, G. S. 47-103, G. S. 47-108.1 and G. S. 47-53.1. *DEANS v. PATE*, 114 N. C. 194.

LICENSE TAX; SECTION 144; SOFT DRINK STANDS; AUTOMATIC
DISPENSER OF COFFEE

1 June 1953

Coffee is not a soft drink within the meaning of Section 144 of the Revenue Act.

LICENSE TAXES; DRIVE-IN THEATERS; AUTHORITY OF COUNTY TO TAX;
LOCATION OUTSIDE CITY LIMITS; SECTION 104½ OF THE REVENUE ACT

1 June 1953

Counties may not levy license taxes on drive-in theaters and cities and towns may not levy license taxes on drive-in theaters located outside the corporate limits.

PROBATE AND REGISTRATION; PROBATE BY JUDGE OF RECORDER'S COURT IN
BEAUFORT COUNTY

1 June 1953

It is doubtful that a judge of the recorder's court, acting under a local act giving him all the jurisdiction, power and authority as is conferred upon justices of the peace by the Constitution and existing laws in North Carolina, has the authority to take acknowledgments of conveyances to be recorded. Such a recorder does not have a right to administer oaths in private matters not connected with or arising out of the duties of his office.

COUNTY MANAGER FORM OF GOVERNMENT; APPOINTMENT OF MEMBER OF THE
BOARD OF COUNTY COMMISSIONERS AS COUNTY MANAGER

1 June 1953

A board of county commissioners may, by resolution, name a member of its board as full-time county manager and increase his compensation. The

resolution should specifically set forth the additional duties to be performed by the member appointed to the position. STANSBURY v. GUILFORD COUNTY, 226 N. C. 41, is distinguished.

MUNICIPALITIES; APPLICATION OF ASSESSMENTS FOR LOCAL IMPROVEMENTS;
G. S. 160-397; G. S. 160-103

1 June 1953

Money collected for special assessments by municipal corporations must be used to pay the principal and interest on the bonds and notes issued for the improvements for which the collection is made or other bonds and notes issued for other local improvements, the cost of which has been especially assessed against abutting property for which bonds and notes have been issued. Special assessments collected cannot be used for any purpose other than to pay bonds and notes for local improvements, the cost of which is assessed against the abutting property, and cannot be used for the construction of a city hall, fire station or other non-revenue producing buildings.

SALES TAX; USED CARS

2 June 1953

When a used car dealer sells an automobile, sales tax is due in the usual manner with respect to such car with the two following principal exceptions:

1. No tax is due on the sale of such used car by a used car dealer if such used car was acquired as a trade-in as part of the purchase price of a car being sold by the used car dealer and tax was collected with respect to the total purchase price of the car being sold when the trade-in was acquired.

2. No sales tax is due on the resale of a car repossessed by the car dealer.

EXECUTORS; CIVIL PROCEDURE; SPECIAL PROCEEDINGS

2 June 1953

When a testator in his will appoints an executor without an express power of sale, but directs that his real estate be sold and divided among named devisees, it is thought that if the real question is whether the executor has been granted in the will a power of sale by implication, the procedure to determine that fact should be a civil action for a construction of the will under G. S. 1-254; but when the proceeding is simply for a court order authorizing a sale in order to carry out the wishes of the testator, it is thought that the procedure is a special proceeding before the Clerk. VAUGHAN v. FARMER, 90 N. C. 607; BAKER v. CARTER, 127 N. C. 92 and LUMBER COMPANY v. SWAIN, 161 N. C. 566.

SCHOOLS; COUNTY-WIDE CURRENT EXPENSE BUDGET; ALLOCATION TO
CITY ADMINISTRATIVE UNIT

2 June 1953

G. S. 115-363 provides that all county-wide current expense school funds shall be apportioned to county and city administrative units monthly and shall be allocated to the different units on a per capita basis. *TRUSTEES v. BENNER*, 222 N. C. 566. While the Capital Outlay School Budget is based upon need, the Current Expense Budget, as between the various administrative units in the county, must be upon a per capita basis. In making the budget, the County Board of Education, the Board of Trustees of the various city administrative units, the Board of County Commissioners and the State Board of Education all have important duties to perform to see that the provisions of G. S. 115-363 are complied with.

JURY LISTS; ELIMINATION OF THOSE WHO HAVE SERVED DURING
PRECEDING TWO YEARS

2 June 1953

A person's name drawn from the jury lists cannot be eliminated because he has served on the jury within two years. The disqualification of the person from serving on the jury on account of having served within two years applies only to tales jurors.

MUNICIPAL CORPORATIONS; INCREASE IN NUMBER OF TOWN COMMISSIONERS

2 June 1953

In the absence of charter provisions to the contrary, a municipal corporation, at an election duly held, may increase or decrease the number of its governing board so that the board shall consist of not less than three nor more than seven commissioners. The election on this question must be held at the regular municipal election.

JURISDICTION OF SPECIAL JUDGES

2 June 1953

G. S. 7-65 giving special judges chambers jurisdiction in the county of residence of such judge is not repealed by the 1953 Act authorizing the appointment of special judges and special judges appointed under this Act would continue to have the authority and jurisdiction provided by G. S. 7-65.

COUNTY COMMISSIONERS; APPROPRIATION OF NON-TAX LEVY FOR
CAMP SITE FOR GIRL SCOUTS

3 June 1953

It is to be doubted that the Board of County Commissioners has the authority to appropriate non-tax revenues to apply toward the purchase of a camp site for Girl Scouts, since this would not seem to be a public

purpose within the contemplation of Article V, Section 3, of the State Constitution. *KETCHIE v. HEDRICK*, 186 N. C. 392, and *BRIGGS v. RALEIGH*, 195 N. C. 223.

MOTOR VEHICLES; REQUIRED EQUIPMENT; DIRECTIONAL SIGNALS

3 June 1953

Directional signals are required upon a motor vehicle to be registered in North Carolina only if the vehicle bears a model designation which necessarily shows that the vehicle was manufactured or assembled after July 1, 1953.

**CRIMINAL PROCEDURE; ARREST; RIGHT OF POLICE OFFICER TO ARREST
WITHOUT WARRANT OR SEARCH WARRANT**

4 June 1953

Construing together the provisions of Article 6, Chapter 15 of the General Statutes, and G. S. 160-21, it is doubtful that a police officer has the right to search, without a search warrant, a private room in a cafe occupied by customers and the door thereto closed and a notice of "private" placed on the door. In such case, it seems safer for the officer to have a search warrant if he has reliable information that the law is being violated in such room. *STATE v. WRAY*, 217 N. C. 167.

AD VALOREM TAXATION; PERSONAL PROPERTY; PLACE OF LISTING; BOATS

4 June 1953

Under the provisions of Subsection 4 of Section 800 of the Machinery Act (G. S. 105-302) boats are listed at the place where they are situated when the owner hires or occupies a dockyard for use in connection with such boats.

**COUNTY COMMISSIONERS; APPROPRIATION OF NON-TAX REVENUES FOR WATER
AND SEWER FACILITIES; ENCOURAGING INDUSTRIAL DEVELOPMENT**

4 June 1953

Construing together Chapter 158 of the General Statutes, Chapter 135, Public Local Laws of 1925, Chapter 413, Public Local Laws of 1927, and Section 6 of Chapter 1083, Session Laws of 1947, it is thought that the Commissioners of Buncombe County may appropriate non-tax revenues to provide water and sewer facilities sufficient to meet the needs of new commercial and manufacturing plants being located in the County.

**MEMBERSHIP ON GREENSBORO ALCOHOLIC BOARD OF CONTROL;
RESIDENCE REQUIREMENTS**

4 June 1953

In order to qualify for membership on the Greensboro Alcoholic Board of Control, a person must be a qualified elector of the City of Greensboro.

SCHOOLS; AUTHORITY OF COUNTY SUPERINTENDENT AND COUNTY BOARD OF
EDUCATION TO REJECT PRINCIPALS

5 June 1953

Because of the express language of G. S. 115-359, it is thought that a principal must be notified of the termination of his continuing contract by the last day of the nine months regular school term in spite of the fact that a principal is employed for ten months. G. S. 115-354; G. S. 115-359; G. S. 115-351(1). BOARD OF EDUCATION v. DICKSON, 235 N. C. 359.

INHERITANCE TAX; JOINT BANK ACCOUNTS

5 June 1953

When one joint bank depositor dies and another bank depositor acquires the bank account by right of survivorship, under the provisions of Subsection Ninth of G. S. 105-2, so much of the bank account as was owned or furnished by the deceased person is subject to inheritance tax.

SHERIFFS; FEES; COLLECTING EXECUTIONS

5 June 1953

Under Chapter 779, 1953 S. L. (formerly H. B. 845), Sheriffs and Deputy Sheriffs of Bladen County are entitled to a fee of 4% upon all monies collected under civil executions.

MOTOR VEHICLES; PENALTIES; EQUIPMENT

8 June 1953

The penalty for violation of the several provisions of the Motor Vehicle Act relating to the equipment of a vehicle is a fine of not more than \$50 and not less than \$10, or imprisonment not to exceed 30 days.

INCOME TAX; GROSS INCOME; INCOME EARNED ON FEDERAL
RESERVATION; BUCK ACT

8 June 1953

Income earned by a civilian on a Federal reservation such as Camp Lejeune is subject to North Carolina State income taxation.

SEAL; SUPERIOR COURT

8 June 1953

The seal for the superior court of each county is originally furnished by the Governor but, when lost or destroyed, the county commissioners shall provide the replacement and are required by statute to destroy the old seal, if it can be found, in the presence of the chairman of the board of county commissioners of such county. No specific language is required to appear on the seal but it should contain the name of the county and the

language "Superior Court of.....County,
North Carolina" and the word "seal."

COUNTY FINANCE ACT; SUBMITTING TO VOTERS THE QUESTION AS TO
AMOUNT OF BONDS

8 June 1953

The County Finance Act does not authorize the submission to the voters of the question as to the amount of bonds to be issued.

MOTOR VEHICLES; RULES OF THE ROAD; HIT AND RUN STATUTE;
ACCIDENT ON PRIVATE PROPERTY

9 June 1953

The hit and run statute does not apply to an accident occurring on private property.

LICENSE TAXES; PROFESSIONAL ENGINEERS, LAND SURVEYORS AND
ATTORNEYS; EMPLOYEES OF CORPORATION; SECTION 109 OF THE
REVENUE ACT

9 June 1953

Professional engineers, land surveyors and attorneys employed full time by a corporation and engaged solely in handling the legal, engineering and land problems of such corporation are not required to pay license tax under Section 109 of the Revenue Act.

STATE BOARD OF COSMETIC ART; ELIGIBILITY FOR EXAMINATION

9 June 1953

Persons who practiced cosmetic art on and before January 1, 1942, and who do not apply to the Cosmetic Art Board for registration are required to take the examination and otherwise comply with the Cosmetic Art Law before being registered as an apprentice or a cosmetologist.

SALES TAX; VENDING MACHINE; CHARITABLE USE OF PROCEEDS

10 June 1953

Sales tax is due on sales from a coca cola vending machine where the profits are used solely to send flowers to the sick and for other similar purposes.

MOTOR VEHICLES; RULES OF THE ROAD; VALIDITY OF MECHANICAL
TURN SIGNAL

10 June 1953

The mechanical or electrical turn signal, when approved by the Department of Motor Vehicles is a legal substitute for the hand signal.

BAIL; MORTGAGE; AUTOMOBILE LEFT WITH THE SHERIFF IN LIEU OF BOND

10 June 1953

An automobile left in the possession of the sheriff of a county to guarantee or assure return of a defendant who is allowed to go home for the purpose of obtaining funds for paying fine and costs can be sold under the order of the Court, since the circumstances amount to an equitable mortgage in lieu of bond in favor of the State.

COMMISSIONER OF PUBLIC TRUST CONTRACTING FOR HIS OWN BENEFIT

10 June 1953

It would be violative of G. S. 14-234 for the board of aldermen of a town to purchase land or a truck from a member of the board. This statute prohibits a director of public trust contracting for his own benefit.

LICENSE TAXES; CARNIVAL COMPANIES; CHARITABLE EXEMPTIONS FROM
COUNTY TAXES; SECTION 107 OF THE REVENUE ACT

15 June 1953

A county probably cannot classify carnivals operated by non-profit organizations as exempt from a county carnival license tax levied pursuant to the authority contained in Section 107 of the Revenue Act. In any event once the tax has been levied, it cannot be waived by the commissioners.

MUNICIPAL CORPORATIONS; AUTHORITY OF MUNICIPALITY TO CONSTRUCT A
PIPELINE FOR FURNISHING WATER TO A PLAYGROUND OWNED BY A CHURCH

15 June 1953

There is no authority for a municipality to appropriate tax funds or other public funds for the payment of costs of materials and labor for the construction of a pipeline to carry water underground to a playground owned by a church.

MUNICIPALITIES; WATER SUPPLY; RIGHT TO PROVIDE PIPELINE FOR INDUSTRY
TO RELIEVE WATER SHORTAGE

15 June 1953

Municipalities, under the principle of "compensation by way of substitution" as declared in *AUSTIN v. SHAW*, 235 N. C. 722, may construct a pipeline to be leased to a local utility outside of the municipality to relieve the over-burdened water supply, and charge such utility a reasonable amount for the use of such pipeline for reimbursement of the cost of construction.

INTOXICATING LIQUOR; FORFEITURE OF CAR AFTER PURSUIT WHEN LIQUOR
THROWN OUT OF CAR BY DEFENDANT

15 June 1953

Where defendant is pursued by a highway patrolman and succeeds in throwing out of the car all of the unlawful liquor in same, the car is subject to forfeiture if the defendant is convicted of unlawful possession and transportation.

INSANE PERSONS AND INCOMPETENTS; GUARDIAN APPOINTED ON
CERTIFICATE OF CLERK

16 June 1953

A guardian can be appointed by the clerk for a mentally disordered person upon a certificate of a superintendent of a private mental institution, if such mental institution is licensed by and under the supervision of the State.

PUBLIC WELFARE; OLD AGE ASSISTANCE; LIEN; LIABILITY OF PROPERTY OF
HUSBAND FOR ASSISTANCE PAID TO WIFE

16 June 1953

Property solely owned by husband is not liable for or subject to any lien on account of old age assistance benefits paid to the wife. Claims filed for old age assistance benefits must be filed with an administrator or other personal representative of the estate of such deceased beneficiary.

ADOPTION; CONSENT; COUNTY SUPERINTENDENT OF WELFARE TO WHOM
CONSENT AND SURRENDER MUST BE MADE

16 June 1953

In matters of adoption surrender, affidavit and consent may be made by a parent to the superintendent of public welfare of the county wherein an adoption proceeding is pending.

MUNICIPALITIES; BORROWING; BONDS AS COLLATERAL SECURITY

16 June 1953

A municipality is not authorized to pledge bonds that it owns as collateral security on a loan from a bank.

ELECTION LAWS; AUTOMATIC VOTING MACHINES; AUTHORITY OF COUNTIES
AND MUNICIPALITIES TO PURCHASE MACHINES WITHOUT A
VOTE OF THE PEOPLE

16 June 1953

A board of county commissioners or the governing board of a municipality may submit the question of the acquisition of voting machines to a

vote of the people under the 1953 amendment to Article 20 of Chapter 163 of the General Statutes, or such governing boards may, if they so elect, acquire voting machines without submitting this question to a vote of the people.

PUBLIC HEALTH; RABIES; FEES TO BE CHARGED FOR LATE VACCINATION

16 June 1953

The rabies law as amended by the General Assembly of 1953 requires that the dog owner in case of late vaccination shall pay the sum of \$1.00 and also an additional \$1.00 as a penalty, making \$2.00 in all.

ELECTIONS; ABSENTEE VOTING; BOND ELECTIONS

17 June 1953

Absentee voting is not permitted under the law in special bond elections, as the statute limits the right to vote absentee ballots to general elections.

ADOPTION; DEATH OF ONE PETITIONER; EFFECT OF CHAPTER 824 OF SESSION LAWS OF 1953

17 June 1953

Where a husband and wife petition the court for the adoption of a child and the interlocutory order is signed but the husband dies before the final order is signed, and also before the effective date of Chapter 824 of the Session Laws of 1953, the adopted child cannot inherit from the estate of the deceased petitioner, since the 1953 Act is not retroactive.

COURTS; MUNICIPAL RECORDERS' COURTS; AUTHORITY OF TOWN COMMISSIONERS TO ESTABLISH SCHEDULE OF FEES

17 June 1953

The article in Chapter 7 of the General Statutes permitting the establishment of municipal recorders' courts authorizes the board of commissioners of the town establishing such court to fix reasonable charges in the bill of costs for the recorder, solicitor and the clerk.

COUNTY COMMISSIONERS; SPECIAL PROCEEDINGS; INCOMPETENTS

17 June 1953

G. S. 153-156 points out the procedure for selling or renting the property of an indigent inmate of a county home. In case such person is incompetent, a claim is simply filed by the county with the guardian. If disallowed, a regular civil action to collect can be instituted. However, if property is to be sold for the satisfaction of the type of claim, the special proceeding pointed out in the statute is proper procedure. In a case in

which the guardian is in possession of funds derived from the sale of real property in another proceeding, it would seem that the guardian should claim a personal property exemption for his ward, and should plead the three-year statute of limitation. G. S. 1-52. GUILFORD COUNTY v. HAMPTON, 224 N. C. 817.

BEER AND WINE; PROHIBITION OF SALE OF UNFORTIFIED WINES IN SOUTHERN PINES; PROHIBITION OF SALE TO MINORS

18 June 1953

G. S. 18-120 provides that the governing body of any municipality in Moore, and several other counties named therein, shall have power by resolution to regulate and prohibit the sale of wines within the corporate limits of such municipality. G. S. 18-96 defines fortified wines. G. S. 18-64(b) defines unfortified wines. G. S. 18-99 defines sweet wines and makes the provisions of the 1937 ABC Act applicable to fortified wines and sweet wines. Under the foregoing statutes, it is thought that the Town of Southern Pines in Moore County may, by proper resolution, legally prohibit the sale of unfortified wines within the town and allow the sale of fortified and sweet wines.

G. S. 18-46 provides that fortified wines may not be knowingly sold to any minor, while G. S. 18-78.1 provides that unfortified wines may be legally sold to minors over eighteen. It is doubtful that any provision of G. S. 18-120 authorizes the Town of Southern Pines to pass any ordinance changing the State-wide law as to the sale of wine to minors.

LICENSE TAXES; CHAIN STORE TAX; FARMERS COOPERATIVE EXCHANGE;
SECTION 162 OF THE REVENUE ACT

18 June 1953

A cooperative organized under subchapter 5 of Chapter 54 of the General Statutes is exempt from the chain store tax.

MOTOR VEHICLES; DRIVER'S LICENSE; POWER OF COURTS; SUSPENDED
SENTENCE WHERE MINIMUM FINE SPECIFIED

18 June 1953

When the statute imposes a minimum fine or imprisonment, but does not expressly prohibit suspension of the fine or sentence, a judge has the authority to suspend the fine or sentence upon the usual conditions of suspension.

MOTOR VEHICLES; DRIVER'S LICENSE; FOREIGN LICENSE; RESIDENT HAVING
VIRGINIA LICENSE

18 June 1953

A North Carolina resident must have a North Carolina operator's license to operate a motor vehicle on the highways of the State. It is not sufficient for him to have a valid license from another state.

MOTOR VEHICLES; DRIVERS' LICENSES; POWER OF COURTS; DUTY OF CLERK
TO TRANSMIT RECORD OF CONVICTION

18 June 1953

G. S. 20-24 and 20-278 are mandatory in requiring the clerk to forward to the Department of Motor Vehicles records of convictions for motor vehicle offenses.

CRIMINAL LAW; JUVENILE COURTS; CHILD FIFTEEN YEARS OF AGE CHARGED
WITH BREAKING AND ENTERING

19 June 1953

Children under fourteen years of age can only be tried in the juvenile court, and their cases are not within the jurisdiction of the Superior Court at all. Children between the ages of fourteen and sixteen years of age, where the offenses are felonies and the punishment cannot exceed ten years, may be bound over to the Superior Court for prosecution or the juvenile judge may retain the case for his own disposition. Where children are between fourteen and sixteen years of age and commit felonies, the punishment of which may exceed ten years, that is, ten years or over, they are prosecuted in the Superior Court the same as any other adult.

SCHOOLS; SUPPLEMENTARY TAX; LOCAL BUDGET

22 June 1953

A supplemental tax was voted in a school administrative unit under the terms of Section 14, Chapter 358, Public Laws of 1939, now codified as G. S. 115-361. At a later date and after another referendum vote, the maximum amount of the tax to be levied was increased. One of the purposes of the first proposals submitted was to operate the schools for a term of nine months. Since there has been no new election in which the people have withdrawn their permission for the levy of a supplemental tax, and the statutes have not been materially amended, it is thought that the tax levying authorities still have the power to levy the maximum tax authorized in the referendum elections, although they should take into consideration in passing upon the budget the fact that the 9th month and the 12th grade are now provided by the State.

COURTS—GENERAL COUNTY; CONTROL OVER DOCKET

23 June 1953

The Judge of a General County Court has authority over the docket of his Court and unless a case is calendared, a motion for continuance on behalf of the prosecution is directed to the sound discretion of the Judge.

BANKS; DONATIONS FOR CHARITABLE, RELIGIOUS AND ELEEMOSYNARY
PURPOSES

23 June 1953

A bank or any other business corporation may, from its earnings and profits, make reasonable donations to public considerations which promote the business of the bank or the corporation and which might be considered in the nature of expenditures for business purposes, or in advertising the bank and promoting the community in which they do business.

MOTOR VEHICLES; RULES OF THE ROAD; STOP SIGNS; AUTHORITY OF CITY
COUNCIL TO DELEGATE POWER TO POLICE DEPARTMENT

23 June 1953

Only the governing body of the municipality can declare certain streets as "stop" streets, and this authority cannot be delegated to the police department.

COUNTY POWERS; AUTHORITY TO DONATE TO MUNICIPALITY FOR PURCHASE
OF MUNICIPAL FIRE TRUCK

23 June 1953

A county cannot donate to the county seat to enable the county seat to purchase a fire truck for use therein.

REFUSAL OF MOTORIST USING MUNICIPAL OFF-STREET PARKING FACILITIES
TO DEPOSIT REQUIRED COIN IN PARKING METER AS BEING A VIOLATION
OF SECTION 14-108 OF THE GENERAL STATUTES

23 June 1953

It is doubtful whether G. S. 14-108 with respect to the unlawful use of slot machines would be applicable to the enforcement of municipal slot machines on parking areas.

CLERKS OF COURT; CABARRUS COUNTY; FEES FROM EMERGENCY RESERVE
FUND, CHAPTER 1097

23 June 1953

The Clerk of Court is not entitled to commissions from the fund set aside for the relief of law enforcement officers of Cabarrus County. Chapter 1097, 1953 Session Laws.

MUNICIPALITIES; AUTHORITY TO ISSUE PROMISSORY NOTE;
CONSTRUCTION OF JAIL

24 June 1953

A town may issue a promissory note to raise money for the erection of a jail, subject to the constitutional debt limitations and the provisions of the Municipal Finance Act and the Local Government Act.

SALE OF RE-REFINED OIL; STOCKS OF RE-REFINED OIL ON HAND ON
JULY 1, 1953

24 June 1953

Re-refined oil cannot be offered for sale, sold, or delivered on and after July 1, 1953, unless it bears the label in compliance with Chapter 1137, Session Laws of 1953.

COURTS; SESSIONS OF RECORDER'S COURT; CHANGE OF JUDGMENT

24 June 1953

Under the provisions of G. S. 7-221 a County Recorder's Court has no authority to reopen a case after the end of the weekly term at which final judgment was pronounced. Therefore, the only available procedure to a person sentenced to a term of imprisonment from such court is an application for parole. G. S. 7-220, as to terms of Recorders' Courts, is construed in *STATE v. McLEOD*, 222 N. C. 142.

STATE PORTS AUTHORITY; PLEDGING OF NET REVENUES FROM OPERATION OF
PORTS TO SECURE REVENUE BONDS

24 June 1953

Under the State Ports Bond Act, the State Ports Authority, as authorized by G. S. 143-219, may issue revenue bonds for making enlargements, extensions and other improvements in the ports facilities at Morehead City and Wilmington, and pledge the payment of the principal and interest of such bonds with the entire operating net revenues of these bonds.

SCHOOLS; AUTHORITY COUNTY SUPERINTENDENT AND COUNTY BOARD OF
EDUCATION TO REJECT TEACHERS

24 June 1953

Under the language of G. S. 115-359 and the decision in *BOARD OF EDUCATION v. DICKSON*, 235 N. C. 359, it is thought that a teacher already in service may not be dismissed by action of the county superintendent and the county board of education, without action having been taken by the local school committee.

SCHOOLS; TEACHERS CONTINUING CONTRACT; NOTICE REQUIRED TO
TERMINATE CONTRACT OF TEACHER OF VOCATIONAL AGRICULTURE

25 June 1953

It is thought that the continuing contract of a teacher of vocational agriculture remains in full force and effect unless the teacher is notified by registered mail prior to the close of the school term that his contract is discontinued, this being by proper action of the local school committee, county superintendent and the county board of education. It is thought

that the foregoing expresses the legislative intent even though the contract for such teachers is July 1st to June 30th. Of course the county commissioners may disallow the item in the budget for the county's part of the vocational educational program. G. S. 115-243, G. S. 115-247, G. S. 115-354, G. S. 115-359, G. S. 115-363(a). BOARD OF EDUCATION v. DICKSON, 235 N. C. 359.

INCOMPETENTS; RIGHT OF SURGEON TO PERFORM OPERATION;
CONSENT REQUIRED

25 June 1953

A surgeon is authorized to perform an operation on an adult incompetent in a county or city hospital for the mentally defective upon the consent of the next of kin of such person and the operation is considered necessary. If the incompetent has no close kin, it may be necessary to appoint a guardian to give consent. In cases of emergency involving possible loss of life of the patient, the operation could be performed without consent.

NORTH CAROLINA SYMPHONY SOCIETY; CHAPTER 1212, SESSION LAWS OF 1953

25 June 1953

Nontax funds referred to in Chapter 1212, Session Laws of 1953, authorizing donations by counties and cities to the North Carolina Symphony Society, would include, by way of illustration, proceeds from the sale of surplus property, ABC funds and net revenues from municipal utilities, after compliance with G. S. 160-397. Receipts from beer taxes and intangible taxes would not be nontax funds.

MUNICIPAL TAXATION; SALE OF GUNS

25 June 1953

Under the provisions of G. S. 160-56, a municipal corporation would be authorized to levy a privilege tax upon the sale of guns, exclusive of pistols.

COUNTY TAXATION; PIN BALL MACHINES

25 June 1953

G. S. 14-307 prohibits the levying of a State, county or municipal tax with respect to "pin ball machines" which are electrically operated and "keep an automatic score."

SCHOOL BONDS; ACCEPTANCE OF BIDS AFTER ACCEPTANCE HAS BEEN
DEFERRED SINCE MAY 1951

26 June 1953

Bids received for public work which were not accepted at the time on account of lack of funds could not be accepted more than two years after the bids were submitted. It would be necessary to readvertise for new bids.

JURY TRIALS IN RECORDERS' COURTS; COSTS

29 June 1953

A defendant in county recorder's court pays the costs incident to a jury trial only in case he is the party demanding the jury trial and recovers judgment, and not otherwise. G. S. 7-228, 7-204, 7-155.

SCHOOLS; RE-EMPLOYMENT RIGHTS OF TEACHERS ENTERING THE
ARMED SERVICES

29 June 1953

G. S. 115-359.1 preserves for teachers who enter the Armed Services after September 16, 1940 experience increments for the period of such service as though the same had not been interrupted by such military service. G. S. 135-4(6) as amended by Section 3, Chapter 1050, Public Laws of 1953, preserves for teachers who enter the Armed Services after July 1, 1950, but prior to July 1, 1955 and return to the service of the State within a period of two years after honorable discharge, their rights under the Teachers' and State Employees' Retirement Act. However, there seems to be no statute guaranteeing to a teacher who enters the Armed Services the right of re-employment as a teacher, but it is felt that the public school system owes to such a teacher a very strong moral obligation.

MUNICIPALITIES; RIGHT TO SELL PROPERTY USED FOR COMMUNITY HOUSE
AND USE FUNDS FOR NEW BUILDING ON LAND DONATED FOR THAT PURPOSE

29 June 1953

A municipality has a right to sell property presently devoted to community center purposes and apply the proceeds to the construction of a new recreation center or community center building on land donated for that purpose without violating Article VII, Section 7, of the Constitution.

MUNICIPALITIES; PURCHASE OF EQUIPMENT; ADVERTISEMENT

29 June 1953

A municipality which wishes to purchase a used fire truck must advertise for bids if the cost of the purchase is in excess of \$1,000.00, as required by G. S. 143-129. Specifications could be made to permit the purchase of the used fire truck instead of a new one.

COUNTIES; COUNTY COMMISSIONERS; INSTITUTE OF GOVERNMENT; EXPENDI-
TURE OF COUNTY FUNDS FOR SURVEYS OF COUNTY DEPARTMENTS BY
INSTITUTE OF GOVERNMENT ON COST BASIS

29 June 1953

Boards of county commissioners are authorized to include in their budgets and appropriations funds to pay the Institute of Government of the

University of North Carolina for making surveys and investigations of county offices, agencies, and departments on a purely cost basis.

SCHOOLS; SALE OF ABANDONED SCHOOL PROPERTY IN LOTS OR PARCELS

29 June 1953

It is thought that under the provisions of G. S. 115-86 a board of education has authority to offer abandoned school property for sale in individual lots according to a plat of the property recorded prior to the time the board of education acquired title. Of course the advertisement should expressly stipulate that the sale is to be by individual lots and that the board reserves the right to reject any and all bids.

FRANCHISE TAX; EXEMPTIONS; INCORPORATED VOLUNTARY FIRE DEPARTMENT

1 July 1953

A non-stock, non-profit incorporated voluntary fire department is exempt from the payment of franchise tax.

STATUTE OF LIMITATIONS; NON-RESIDENT

1 July 1953

The statute of limitations on a cause of action arising out of a motor vehicle accident in this State does not run in favor of a non-resident.

PUBLICATION OF DISBURSEMENTS OF THE COUNTY

1 July 1953

Under G. S. 153-68, counties are required to post and publish the names of every individual whose account has been audited, the amount claimed, and the amount allowed. This would include salaries and wages paid all county officers and employees.

SCHOOLS; SUPPLEMENTARY TAX; BUDGET

1 July 1953

Under G. S. 115-363, 115-361, 153-124 and 160-409, it is thought that any surplus from a levy of a supplemental school tax remaining at the end of the fiscal year must be taken into consideration in making the budget and fixing the tax rate for the succeeding fiscal year. Such surplus cannot be used during the current fiscal year unless a supplemental budget is made and approved by the tax levying authorities and the State Board of Education. *SCHOOL TRUSTEES v. BENNER*, 222 N. C. 566.

HABEAS CORPUS; AUTHORITY OF JUDGE TO REFUSE ISSUANCE OF WRIT

2 July 1953

A petitioner or applicant for a writ of habeas corpus is required to comply with G. S. 17-7 and to make the necessary allegations which legally

entitle him to an issue of the writ. Unless these necessary allegations are made a judge of the Superior Court has a right to refuse to issue the writ.

CRIMINAL LAW; TEMPORARY LARCENY OF AUTOMOBILE; OWNER PERMITTING
PERSON TO TAKE CAR TO TRY IT OUT

2 July 1953

Where a person obtains possession of a car from a used car lot with consent of owner for the alleged purpose of trying the car out and does not return the car at the agreed time, under *STATE v. DELK*, 212 N. C. 631, it is doubtful if a prosecution will lie for larceny or larceny for temporary use. There is a probability that an indictment for larceny on the theory of obtaining possession by trick or fraud might be maintained, but no decision of the Supreme Court has been found relating to approximately similar facts.

CLAIM AND DELIVERY; POWER OF SHERIFF TO SEIZE PROPERTY
CONCEALED IN A BUILDING

2 July 1953

G. S. 1-480 gives the Sheriff authority to cause a building to be broken open in order to seize property described in a claim and delivery proceeding. Of course the applicable statutes should be strictly followed and no more force should be used than is reasonably necessary to take possession of the property and the building should not be damaged at all if it can be avoided.

CONTRACTS; IMPOSSIBILITY OF PERFORMANCE DUE TO LEGAL
PROHIBITION; DAMAGES

2 July 1953

Non-performance of a contract is excused where performance is rendered impossible by the law. One of the conditions implied in a contract is that the promisor shall not be compelled to perform if performance is rendered impossible by an act of the law. A contract which is legal in its inception, but becomes illegal by subsequent statutory enactment, is wholly terminated as soon as the statute takes effect and no action can be maintained by either party for failure to perform the obligations of the contract after the illegality has attached. 12 American Jurisprudence (Contracts), Section 379, pages 954 and 955. This identical question seems to have never been decided by our courts. Since there seems to be no North Carolina case in point, a party to such contract might be justified in paying a small consideration in order to settle a doubtful claim.

AD VALOREM TAXATION; PAYMENT OF DELINQUENT TAXES INTO GENERAL
FUND; WHAT CONSTITUTES DELINQUENT

2 July 1953

The word "delinquent" as it appears in Chapter 827 of the Session Laws of 1953 authorizing payment of taxes delinquent for two or more years into

the general fund of the county refers to those taxes which are unpaid at the time of settlement by the tax collector.

COUNTIES; TAXATION; BEER AND WINE; TAX ON WINE DEALERS

3 July 1953

It would seem that the only statute allowing counties to tax the retail sale of wine is G. S. 18-76, which places a privilege tax upon the sale of unfortified wine. Fortified wines may be sold only in A.B.C. stores. G. S. 18-95. However, G. S. 18-99 permits the sale of sweet wines in hotels, restaurants and drugstores under the circumstances enumerated in the statute. G. S. 18-85.1 places a State tax of forty cents per gallon on fortified wines. G. S. 105-60, 105-62 prohibit counties from levying any privilege tax upon hotels and restaurants. It is difficult to see why the General Assembly has not authorized a privilege tax upon the sale of sweet wines in hotels, restaurants and drugstores.

HARNETT COUNTY RURAL LAW ENFORCEMENT OFFICERS;
SERVICE OF CIVIL AND CRIMINAL PROCESS

3 July 1953

Chapter 547, Session Laws of 1953, authorize the Board of Commissioners of Harnett County to employ rural law enforcement officers. Section 2 of the Act gives such officers the authority that the Sheriff has to serve civil and criminal process. It is thought that such process should be directed to "The Sheriff or other lawful officer of Harnett County" except that a civil summons issued by a justice of the peace may be directed to any constable or other lawful officer of the county. There is some doubt that these special officers would have authority to serve process directed to the Sheriff only.

MUNICIPAL CORPORATIONS; RESIDENCE REQUIREMENTS OF CHIEF OF POLICE,
TOWN CLERK AND TAX COLLECTOR

3 July 1953

In spite of the 1951 amendment to G. S. 160-25, it is thought that a chief of police, a town clerk and a town tax collector are all public officials within the contemplation of Article VI, Section 7 of the North Carolina Constitution. Therefore, it is thought that only qualified voters within the town can qualify for these offices.

APPROPRIATIONS ACT OF 1953; RETROACTIVE PAY INCREASE; EMPLOYEES
ENGAGED IN REPAIRING, ALTERING OR RENOVATING STATE BUILDINGS

3 July 1953

Employees engaged in force-account construction, repairing, and alterations of buildings of State institutions whose length of employment may be reasonably ascertained and whose source of payment is appropriations from the permanent improvement fund, and who are not paid from the

general fund, are not entitled to the retroactive pay increase provided by the General Assembly of 1953.

COURTS; JUSTICES OF THE PEACE; DEPUTY SHERIFF ACTING
AS JUSTICE OF THE PEACE; FEES

6 July 1953

Where a deputy sheriff is commissioned as a magistrate for the purpose of issuing warrants, there being no statutory provision to the contrary, he is allowed to retain the usual fees of a magistrate, and the justice or inferior court to whom the case is removed would retain the trial fees.

OLD AGE ASSISTANCE; ATTORNEYS' FEES; LIEN

6 July 1953

The old age assistance lien law does not provide for attorneys' fees to be paid the county attorney for his duties in connection with such liens. The board of county commissioners can increase the county attorney's compensation in its discretion for these extra duties.

PUBLIC WELFARE; ADOPTION; CONSENT WHERE ONE OR BOTH
PARENTS ARE MENTALLY INCOMPETENT; S. B. 47

6 July 1953

Under S. B. 47 the adoption court may appoint a next friend to give or withhold consent upon a finding of mental incompetency of one or both of the natural parents of a child. This is not based on incurable insanity, and the County Superintendent of Welfare can make the investigation as to incurable insanity and also give or withhold consent for adoption purposes.

CIVIL PROCEDURE; ALIAS SUMMONS; CHAPTERS 176 AND 1143,
1953 SESSION LAWS

7 July 1953

Under the provisions of Chapter 1143, Session Laws of 1953, the Sheriff has twenty days instead of ten days within which to serve a summons. Chapter 176, Session Laws of 1953, rewrites G. S. 1-95 and 1-96 substituting an endorsement on the original summons for the issuance of alias and pluries summons. The Act became effectual on July 1, 1953, but applies to litigation pending on said date as well as to litigation thereafter begun.

ARCHITECTS; NECESSITY OF SUPERVISION IN CONSTRUCTION OF
PUBLIC BUILDINGS

7 July 1953

Plans for the construction of a church should be formulated by duly licensed architect under the statute defining architects. It is not clear, however, when such a building is to be constructed under the immediate supervision of an architect.

INTOXICATING LIQUOR; TURLINGTON ACT; PAINT THINNER

7 July 1953

Under G. S. 18-1 liquids and compounds, whether medicated, proprietary, patented or not and by whatever name called, containing one-half of one percentum or more of alcohol by volume and are or can be used for beverage purposes, are prohibited, and their use and possession made unlawful, and this provision to this extent is also applicable to counties operating under the ABC laws.

PUBLIC HEALTH; MILK ORDINANCE; ORPHANAGES

7 July 1953

Where the regulations of a local health unit require milk to be pasteurized the regulation would be applicable to orphanages operated by churches since such institutions are not exempt from public health laws and regulations.

DIVORCE; INSANE PERSON

8 July 1953

In all cases where a husband and wife have lived separate and apart for five consecutive years, without cohabitation, and are still so living separate and apart by reason of the incurable insanity of one of them, the court may grant a decree of absolute divorce upon the petition of the sane spouse, provided the evidence shall show that the insane spouse is suffering from incurable insanity, and has been confined for five consecutive years next preceding the bringing of the action in an institution for the care and treatment of the mentally disordered.

SALES TAX; RELIGIOUS ORGANIZATIONS; SALES BY RELIGIOUS ORGANIZATIONS NOT EXEMPT

8 July 1953

Retail sales made at a "salvage" or "rummage" sale are subject to the State retail sales tax even though such sales are conducted by religious societies or organizations.

INNS, HOTELS, AND RESTAURANTS; ADMITTANCE OF DOGS TO BEDROOMS

8 July 1953

It is unlawful for any innkeeper or guest owning, keeping, or who has in his care a dog or dogs, to permit such a dog or dogs admittance to any bedroom or rooms used for sleeping purposes in any inn or hotel. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not exceeding \$50.00 or be imprisoned not more than 30 days.

PUBLIC CONTRACTS; LOWEST RESPONSIBLE BID UNDER G. S. 143-129

8 July 1953

In an advertisement for bids under G. S. 143-129, three bidders each submitted a base bid and a bid on three alternates. A fourth bidder submitted only a base bid and a bid on alternate No. 1. Upon recommendation of the architects, the governing body has decided to accept an alternate on which the fourth bidder did not submit a bid. Under those circumstances, it is thought that the bid of the fourth bidder should not be counted and that the contract should be let to the lowest responsible bidder among the first three bidders.

SALES TAX; SINGLE ARTICLE; PROPERTY BECOMING PART OF
BUILDING OR OTHER STRUCTURE

9 July 1953

A broadcasting station television antenna would not constitute a single article subject to the sales or the use tax of \$15.00 limitation. Any component part of such antenna would, however, be subject to such limitation if the purchase price with respect to such component part exceeds \$500.00. To illustrate, if the purchase price of the "supporting pole" exceeds \$500.00 it is subject to the \$15.00 maximum, or if the purchase price of a "junction box" or "batwing radiator" exceeds \$500.00, the tax with respect to such box or radiator would be subject to the \$15.00 single article maximum.

DEEDS OF TRUST; CANCELLATION BY ATTORNEY IN FACT
OR PERSONAL REPRESENTATIVE

9 July 1953

Under G. S. 45-37(1) a deed of trust may be cancelled of record by an agent or attorney in fact of the trustee regularly appointed in a formal power of attorney duly registered.

Under the same subsection it is provided that a deed of trust may be cancelled of record by the personal representative of the deceased trustee. However in a case in which some of the notes have been lost, it would seem advisable for the personal representative to require an indemnifying bond.

COUNTY COMMISSIONERS; BLANKET BOND FOR COUNTY
OFFICERS AND EMPLOYEES

9 July 1953

Since the various statutes requiring elected county officials to make bond vary so greatly as to the terms of such bonds, it is doubtful that a board of county commissioners is authorized to allow the Clerk of the Superior Court, Register of Deeds, the Sheriff, the Coroner or Constables to make a blanket public employees honesty bond with a faithful performance clause. However, Chapter 799, Session Laws of 1953 rewrites G. S. 109-4 so as to allow assistants, deputies and other persons regularly employed in county offices to be covered by such a blanket bond.

SCHOOLS; SUPPLEMENTS; A.B.C. FUNDS

9 July 1953

Construing together G. S. 115-356, 115-363(a), 18-57 and 18-81.1, it is thought that a board of county commissioners may approve a budget of the county board of education, supplementing any object of expenditure in the current expense budget by an appropriation of A.B.C. funds or the county's part of the beer and wine tax, provided the State Board of Education shall approve the budget as to financial soundness.

MUNICIPAL OFFICIALS; RESIDENCE REQUIREMENTS;
TOWN CLERK AND TAX COLLECTOR

9 July 1953

The office of town clerk and tax collector is a public office, and even though G. S. 160-25 does not specifically provide that the person filling this office shall be a resident of the town, we have consistently rendered opinions that, since one of the qualifications for holding public office is that a person shall be a qualified voter in the political subdivision which he is to serve, all persons holding such positions shall be residents of such political subdivision.

MUNICIPAL CORPORATIONS; WATER RATES INSIDE AND OUTSIDE THE
CORPORATE LIMITS OF A MUNICIPALITY

9 July 1953

Under the provisions of G. S. 160-256, a municipality may fix a different rate for furnishing water to residents outside its corporate limits than that which is fixed for residents of the municipality.

MUNICIPAL TAXATION; PRIVILEGE LICENSE TAXES; ENFORCEMENT

9 July 1953

If a municipal ordinance requires a person to secure a privilege license, and such person fails or refuses to secure such a license, such person would be guilty of a misdemeanor under the provisions of G. S. 14-4 which makes the violation of a town ordinance a misdemeanor within the jurisdiction of a justice of the peace.

COURTS; TERMS OF GENERAL COUNTY COURTS

10 July 1953

Under G. S. 7-272 and the decision in *STATE v. McLEOD*, 222 N. C. 142, it is thought that a term of a General County Court begins on the first Monday of each month and expires by limitation at the time fixed by law for the beginning of the next succeeding term. The presiding Judge

may recess the Court from day to day or to a day certain during the month or in his discretion may adjourn the Court for the term when all cases on the docket and ready for trial have been disposed of. 21 C. J. S., 233.

WILLS; AUTHORITY OF TESTATOR TO EXEMPT EXECUTORS AND
TRUSTEES FROM FILING ANNUAL ACCOUNTS

10 July 1953

Executors and trustees under wills are required by law to file annual accounts without exception, and the testator in a will has no legal authority by clause in the will to relieve his executors and trustees from the duty of filing such annual accounts.

SALES TAXES; FEDERAL TAXES; COLLEGES

10 July 1953

A purchase by an educational institution not operated for profit of materials to be used in carrying on the work of the institution is exempt from the North Carolina Sales Tax.

COURTS; CLERK; SUMMONS UNDER 1953 AMENDMENT TO G. S. 1-89

10 July 1953

Under the amendment to G. S. 1-89 (Chapter 441, Session Laws of 1953), it is thought that a Deputy Clerk of the Superior Court now has authority to issue a summons in a civil action in his own name.

LICENSE TAX; DRINK DISPENSERS; CONCESSIONAIRE

10 July 1953

When a person operates a drink dispenser in a mill owned and operated by another person pursuant to a concession or permit from the owner of such mill, the place where the dispenser is located is not the "place of business" of the owner of the machine. Therefore, the owner of the machine is not exempted by Section 130½ of the Revenue Act from the license tax imposed on distributors or operators of such machines.

(1) AD VALOREM TAXES; DELINQUENT TAXES;

PAYMENT INTO THE GENERAL FUND

(2) DOUBLE OFFICE HOLDING; TAX SUPERVISOR; TAX COLLECTOR;
DEPUTY SHERIFF

10 July 1953

The positions of tax supervisor, tax collector and deputy sheriff are all three public offices within the meaning of the constitutional provision prohibiting double office holding.

MUNICIPAL CORPORATIONS; RAILROADS; EXTENSION OF STREET
THROUGH AND OVER RAILROAD TRACK

13 July 1953

A municipal corporation under the general laws dealing with such unit of government has the right to extend and reopen streets, even though this involves the street extending over the lines of a railroad running over the corporate limits.

COURTS; MUNICIPAL-COUNTY COURT; APPEARANCE BONDS;
REDUCTION OF AMOUNTS OF APPEARANCE BONDS

13 July 1953

A municipal-county recorder's court organized under the General Statutes of the State has the same authority to entertain petitions for the reduction of forfeited bonds as authority exercised by a judge of the superior court.

INSANE PERSONS; DOCTORS' CERTIFICATE; DOCTOR'S PRESENCE AT HEARING

13 July 1953

Under the provisions of G. S. 122-46, relating to the commitment of alleged mentally disordered persons to a state hospital for observation, it is not necessary for the doctors to appear personally at the hearing, for the statute only provides for the doctors to make affidavit that the mentally disordered person is in need of observation and admission to a hospital.

AD VALOREM TAXATION; DELINQUENT TAXES;
PAYMENT INTO THE GENERAL FUND

13 July 1953

G. S. 153-9 (42), enacted by the 1953 General Assembly, authorizes the Board of County Commissioners to pay into the general fund all or any part of the proceeds of taxes which are, when collected, two or more years delinquent. This statute is not limited to any particular tax or taxes, but applies to all taxes. Furthermore, it applies to taxes which have already become delinquent as well as to those which become delinquent in the future.

SALARIES AND FEES; LIMITATION ON AUTHORITY OF COUNTY
COMMISSIONERS TO CHANGE FEES

14 July 1953

Chapter 1227 of the 1953 Session Laws limits the County Commissioners of Montgomery, in their power, to change the salaries of their officers and employees to twenty per cent (20%) of the salary notwithstanding the power given the Commissioners in Chapter 530 of the 1953 Session Laws.

BAIL; SHERIFF, DEPUTY SHERIFF, CONSTABLE, JAILER, OR THE WIFE OF
EITHER OF SAID OFFICIALS NOT PERMITTED TO TAKE BAIL

14 July 1953

G. S. 15-107 expressly prohibits the wife of a sheriff, deputy sheriff, constable, or jailer to act as agent for a bonding company or a professional bondsman engaged in taking bail in criminal cases.

SALES TAX; EXEMPTIONS; MATERIALS USED IN STREET CONSTRUCTION

14 July 1953

When a person is required by a municipality to install curb and gutter but is permitted by the city to do so himself and at his own expense, a purchase of materials by him for use in such work is not "for" the city. Such purchase is therefore not exempt from the sales tax.

BEER AND WINE; ILLEGAL TRANSPORTATION AND POSSESSION

14 July 1953

Construing together G. S. 18-48 and 18-58, it is thought that it is not unlawful for a person to transport in this State or to have in his possession not more than one gallon of beer legally purchased outside North Carolina, without the North Carolina tax stamp being attached thereto. In all other cases the Federal and North Carolina tax stamps must be attached. STATE v. PARKER, 234 N. C. 236; STATE v. BARNHARDT, 230 N. C. 223; STATE v. GORDON, 225 N. C. 241.

SEARCH WARRANT; AUTHORITY OF DEPUTY CLERK OF THE SUPERIOR
COURT TO ISSUE; G. S. 18-13

15 July 1953

A deputy clerk of the superior court has no authority to issue a search warrant under G. S. 18-13 and evidence discovered under a search warrant issued by such deputy clerk cannot be used against the defendant. A search warrant can be served on Sunday.

COSTS; LIABILITY OF COUNTY; NUMBER OF WITNESSES;
APPROVAL OF SOLICITOR

15 July 1953

Under Chapter 58 of the Session Laws of 1953 the solicitor no longer approves bills of costs. They are approved by the clerk of the court.

County and State ABC officers on fixed salaries cannot prove attendance and receive witness fees for attending superior or inferior courts within the territorial boundaries in which such officers have authority to make arrests.

MARRIAGE LAWS; WANT OF CAPACITY TO MARRY; MARRIAGES BETWEEN
WHITE PERSONS AND PERSONS OF ASIATIC DESCENT

15 July 1953

There is no prohibition in this State against the marriage between white persons and those of Asiatic descent.

PUBLIC CONTRACTS; NECESSITY FOR COMPETITIVE BIDDING

15 July 1953

The contract for the construction of a public building, the cost of which will exceed \$15,000.00, must be advertised and awarded in accordance with the provisions of Article 8 of Chapter 143 of the General Statutes.

SALES AND USE TAX; SALE OF SERVICE; 3-D GLASSES

15 July 1953

A sales and use tax question has been presented with respect to transactions involving glasses used to view third dimension movies. Some motion picture exhibitors who furnish glasses to their patrons merely increase the price of admission, others increase the total ticket charge but show the price of the glasses as a separate item on the ticket, and others go a step further and make the charge for the glasses optional with the patron depending on whether the patron wants the glasses.

After giving careful consideration to this matter, it is my opinion that there is no sale within the meaning of the sales tax law in any of the three situations above. In my opinion, such charge as is made with respect to the glasses is in the nature of a service charge.

A different situation is presented when an exhibitor purchases 3-D glasses. In my opinion the 3% sales or use tax would apply with respect to sales to an exhibitor. This is consistent with the above opinion that the exhibitor does not purchase the glasses for resale but purchases them for use.

SALES TAX; EXEMPTIONS; TOWN COMMUNITY HOUSE; SALE OF MEALS

15 July 1953

Meals served and sold in a Town Community House by the hostess who is operating the House are subject to the State retail sales tax.

LOTTERY LAWS; "HOLLYWOOD"

15 July 1953

In order to constitute a lottery in this State, there must be three elements present, to wit: (1) a prize; (2) a consideration; and (3) the winner of the prize is to be determined by some formula of chance. STATE v. LIPKIN, 169 N. C. 265.

SCHOOLS; AUTHORITY TO EMPLOY JANITORS

15 July 1953

Construing together G. S. 115-55, G. S. 115-134 and G. S. 115-354, it is thought that the County Board of Education and not the local school committee has authority to employ janitors. WIGGINS v. BOARD OF EDUCATION, 198 N. C. 301.

NORTH CAROLINA BOARD OF NURSE EXAMINERS; CHAPTER 1199 OF THE SESSION LAWS OF 1953; BOARD OF NURSES REGISTRATION AND NURSING EDUCATION; RENEWAL OF LICENSE; FEES; PRACTICAL NURSES; PENALTIES; BASIC REQUIREMENTS FOR ACCREDITATION OF SCHOOL OF NURSING; ADEQUATE CLINICAL FACILITIES; LICENSURE BY RECIPROCITY

15 July 1953

The present Board of Nurse Examiners has authority to give notice and collect renewal license fees from registered nurses which will be applicable for the year of 1954, and the same procedure is likewise applicable to practical nurses.

ESTATES; DISTRIBUTION OF ESTATES; STATUTES; STATUTORY CONSTRUCTION

15 July 1953

Chapter 1325 of the Session Laws of 1953, relating to the distribution of personal property where there is a surviving widow but no children, would not be applicable with respect to estates of persons dying prior to the effective date of the 1953 Act.

PUBLIC HEALTH; COUNTY BOARD OF HEALTH; MOSQUITO CONTROL; NUISANCE

16 July 1953

The primary enforcement and expense involved in the program of mosquito control and the abatement of nuisances is upon the local board of health with the cooperative assistance of the North Carolina State Board of Health.

JURORS; METHOD OF MAKING JURY LIST FOR COUNTY RECORDER'S COURT

16 July 1953

Where jury trials are demanded in a recorder's court of county-wide jurisdiction, the jury should be selected from the county-wide list of jurors.

- (1) COMMISSIONER OF PUBLIC TRUST CONTRACTING FOR HIS OWN BENEFIT
- (2) DOUBLE OFFICE HOLDING; MEMBERSHIP ON LOCAL ABC BOARD
AND MEMBERSHIP ON LOCAL SCHOOL BOARD

16 July 1953

It would be unlawful for a local school board to purchase supplies for the school from a local merchant who is a member of the board. See G. S. 14-234.

The office of membership on a local ABC board and that of membership on a local school board are both offices within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not hold both of these offices at the same time. The acceptance of a second office by one already holding a public office operates *ipso facto* to vacate the first.

MUNICIPALITIES; PLAN D GOVERNMENT; DOUBLE OFFICE HOLDING;
MEMBER OF COUNCIL ACTING AS CITY TREASURER

16 July 1953

It is thought that G. S. 160-347 enacted in 1935 repeals the provisions of G. S. 160-294 to the extent of conflicts between the two Acts. Therefore, it is thought that the mayor and council of a city operating under Plan D form of Government have authority to elect a member of the council to serve as city treasurer at a salary not exceeding \$900 per annum for his additional services as treasurer.

It is also thought that the council has the optional authority to create the separate office of city treasurer to be filled by appointment of the city manager at a salary to be fixed by the council.

It is also thought that G. S. 160-345 and G. S. 160-347 do not violate the provisions of the State Constitution prohibiting double office holding. Article XIV, Section 7, North Carolina Constitution. *McCULLERS v. COMMISSIONERS*, 158 N. C. 75; *BRIGMAN v. BAILEY*, 213 N. C. 119, and *EDWARDS v. BOARD OF EDUCATION*, 235 N. C. 345.

SALES TAX; SALES OF HANDMADE ARTICLES

16 July 1953

Retail sales of crocheted doilies, chenille spreads, etc. by the person who makes them are subject to the State retail sales tax.

MUNICIPALITIES; CONSTITUTIONAL LAW; PUBLIC AND PRIVATE ACTS

16 July 1953

It is thought that an act extending the corporate limits of a municipality is a private law within the contemplation of Article II, Section 12 of the State Constitution. However, the courts hold that it will be conclusively presumed that the notice required by that section was given before the passage of such an act. *MATTHEWS v. BLOWING ROCK*, 207 N. C. 450; and *HIGHLANDS v. HICKORY*, 202 N. C. 167, and *COX v. COMMISSIONERS OF PITT COUNTY*, 146 N. C. 584. The journal of the Legislature is competent evidence only for the purpose of ascertaining whether a law has been passed in accordance with the provisions of Section 14, Article II, of the State Constitution. *WILSON v. MARKLEY*, 133 N. C. 616 and *LEONARD v. COMMISSIONERS*, 185 N. C. 527.

ADOPTION; CONSENT; NO INFORMATION AS TO PARENTAGE; FOUNDLING

17 July 1953

Where a petitioner desires to adopt a child that is a foundling and whose parentage is unknown, the clerk of the superior court may find that there is no qualified person available to give consent, and upon a publication of proper notice may find that the child has been abandoned and appoint a next friend to give or withhold consent. The parents being unknown, provision for serving notice on unknown parties is made by the acts of the General Assembly of 1953.

COURTS; COMMISSIONS ALLOWED CLERK OF THE SUPERIOR COURT
UNDER G. S. 2-26

17 July 1953

Under Article IX, Section 5, of the State Constitution providing that the clear proceeds of all penalties, forfeitures and all fines collected in the several counties for any breach of the penal or military laws of the State shall belong to and remain in the several counties and shall be faithfully appropriated for the establishment and maintenance of the public schools, it is thought that that part of G. S. 2-26 authorizing the Clerks of the Superior Court to retain a commission on fines, penalties, etc., is in conflict with the constitutional provision. Therefore, a Clerk of the Superior Court is not safe in retaining commissions upon such items. HIGHTOWER v. THOMPSON, 231 N. C. 491; BOARD OF EDUCATION v. HIGH POINT, 213 N. C. 636, 197 S. E. 191; STATE v. MAULTSBY, 139 N. C. 583, 51 S. E. 956.

LICENSE TAXES; ELECTRICAL CONTRACTOR; SECTION 155

17 July 1953

In a town of 10,000 and less than 20,000 population, an electrical contractor must pay a State license tax of \$17.50 per year unless such person employs only one other person, in which case the tax is reduced by one-half.

SCHOOLS; ATTENDANCE; DISTRICT OR SCHOOL IN WHICH CHILD
REQUIRED TO ATTEND

17 July 1953

G. S. 115-352 provides that school children shall attend school within the district in which they reside unless assigned elsewhere by the State Board of Education.

AD VALOREM TAXATION; PERSONAL PROPERTY; NORTH CAROLINA RESIDENT
IN MILITARY SERVICE OUTSIDE NORTH CAROLINA

17 July 1953

A resident of this State does not become exempt from local ad valorem personal property taxation merely because he is outside the State serving in the armed forces.

AD VALOREM TAXATION; EXEMPTIONS; DISABLED VETERANS;
DISABILITY COMPENSATION

17 July 1953

Even though regular monthly disability payments received by a disabled war veteran from the Federal Government are exempt from taxation, property purchased with such payments is subject to local ad valorem taxation.

INHERITANCE TAX; U. S. BONDS; SURVIVORSHIP

17 July 1953

In the case of Government bonds owned by a husband and wife, with right of survivorship, the survivor is subject to inheritance tax with respect to so much of the purchase price of the bonds as was furnished by the deceased spouse.

MOTOR VEHICLES; DRIVER'S LICENSE; SPEEDING; 1953 AMENDMENT

17 July 1953

The 1953 Amendment to the Uniform Driver's License Law provides for the mandatory suspension for 30 days of the driver's license of a person who exceeds by more than 15 miles per hour the speed limit for school buses or the speed limit for other vehicles outside of residential or business districts. This Act does not apply to speeding in residential and business districts unless the vehicle is a school bus carrying school children.

SALES TAX; RELIGIOUS ORGANIZATIONS; SALES BY RELIGIOUS ORGANIZATIONS
NOT EXEMPT

20 July 1953

Retail sales made at a "salvage" or "rummage" sale are subject to the State retail sales tax even though such sales are conducted by religious societies or organizations.

POWELL BILL FUNDS; USE OF FUNDS TO CONSTRUCT SIDEWALKS, CURBS,
GUTTERS, AND DRAINS; USE OF POWELL BILL FUNDS TO PAY OFF
BONDS ISSUED FOR SUCH CONSTRUCTION

20 July 1953

Powell Bill funds may be used for the payment of principal and interest on bonds issued for the purpose of constructing curbs, gutters, and drains. Such funds may not be so used if any part of the proceeds of the bond issue was used for the construction of sidewalks.

CORPORATIONS; DISSOLUTION; CONVEYANCE OF LAND AFTER DISSOLUTION

20 July 1953

Property of a corporation which is discovered more than three years after the corporation's dissolution may be disposed of by a stockholder by making application to the Superior Court for appointment of a receiver of the corporation.

MARRIAGE LICENSES; CORRECTION OF ERRORS; CHAPTER 797,
SESSION LAWS OF 1953

20 July 1953

In order to correct the name or names on a marriage license, application must be made by one or both of the actual parties to the marriage. This must be accompanied by affidavits of at least two other persons who know the true name or names of the person or persons seeking the correction.

MUNICIPAL CORPORATIONS; STREETS; AUTHORITY TO SELL PORTION OF STREET
TO PRIVATE FIRMS OR PERSONS; RESIDENCE OF POLICE OFFICERS

21 July 1953

In the absence of special authority of the General Assembly a municipal corporation cannot sell part of the streets of the city or town to persons, firms or corporations for private use. The officers of a city or town, including its police officers, should be residents of the the city or town.

SCHOOLS; ELECTION OF TEACHERS; DISTRIBUTION BETWEEN SEVERAL SCHOOLS
OF THE ADMINISTRATIVE UNIT; ALLOTMENT BY STATE
BOARD OF EDUCATION

21 July 1953

Construing together the provisions of G. S. 115-354, G. S. 115-355 and G. S. 115-359, it is thought that the contracts of all public school teachers are subject to the allotment of teachers made by the State Board of Education and that the distribution of teachers elected in a particular unit is a matter for the local school authorities. Therefore, it would seem that when a local unit has signed contracts with one teacher more than the State allotment, the local board has the authority to discontinue the contract of the last teacher employed, subject to a re-allotment by the State Board of Education after the opening of schools.

PUBLIC HEALTH; TUBERCULOSIS

22 July 1953

Boards of county commissioners are required to provide separate cells for tuberculous prisoners.

RETIREMENT; SOCIAL SECURITY

22 July 1953

A police officer who is a member of the Law Enforcement Officers Benefit Fund cannot become a member or be covered in the Social Security system under the State Social Security Act.

PUBLIC WELFARE; CHECKS OF DECEASED PERSON PAID TO THE
PERMANENTLY AND TOTALLY DISABLED

22 July 1953

Chapter 213 of the Session Laws of 1953 authorizes the Clerk of the Superior Court to handle checks issued to recipients of old-age assistance prior to death but does not authorize the handling of checks in like manner drawn on other welfare funds.

SCHOOLS; CONSOLIDATION; CHAPTER 1151, SESSION LAWS OF 1953;
APPLICATION TO CONSOLIDATION OF ELKLAND HIGH SCHOOL

WITH BLUE RIDGE HIGH SCHOOL IN ASHE COUNTY

22 July 1953

Chapter 1151 of the Session Laws of 1953, dealing with the consolidation of schools, is prospective in operation, except section 1(d) which has application only to high schools which have been closed on account of having an average daily attendance of less than sixty pupils. Therefore, it is thought that this Act has no application to a consolidation ordered by the county board of education on January 30th 1951 and approved by the State Board of Education on March 1st 1951.

SPECIAL ELECTIONS; MUNICIPALITY; NOTICE OF REGISTRATION AND
ELECTION AND TIME REGISTRATION BOOKS SHOULD BE
KEPT OPEN

22 July 1953

In a special election in a municipality, thirty days' notice of the registration should be given as provided in Section 160-35, and notice of the special election should be published in a newspaper of general circulation in the town for thirty days, and posted for thirty days at the door of the building in which the governing body holds its meetings and three other public places in the town.

QUALIFICATIONS OF MUNICIPAL OFFICERS; RESIDENCE REQUIREMENTS

22 July 1953

The town secretary and treasurer, town clerk, chief of police, and all police officers are required to be residents of the town which they serve.

LICENSE TAXES; PEDDLERS; SECTION 121

22 July 1953

A door-to-door salesman of hosiery, razor blades and shaving cream would be subject to the peddler's license tax.

LICENSE TAXES; TRADING STAMPS; SECTION 156

22 July 1953

G. S. 105-92 levies a license tax on the business of issuing trading stamps or coupons which are redeemable for premiums.

COURTS; RECORDER'S COURT; MUNICIPAL RECORDER'S COURT;
TRANSFER OF CASES

23 July 1953

Where a municipal recorder's court is established under the provisions of Article 24 of sub-chapter VI of Chapter 7 of the General Statutes, a county recorder's court should transfer cases pending on its dockets to the municipal recorder's court if such cases are within the territorial jurisdiction of the court.

COUNTY COMMISSIONERS; PROPERTY OF INDIGENT, LIEN FOR MAINTENANCE

23 July 1953

When property has been conveyed out-right to county commissioners in lieu of a proceeding under G. S. 153-156 for the enforcement of the lien for maintenance of an indigent person, it is thought that the Commissioners have authority to convey the property to the sole beneficiary under the will of the indigent upon reimbursement in full for maintenance furnished to the indigent.

SEARCH WARRANT; ILLEGAL SEARCH WARRANT; USE OF EVIDENCE
DISCOVERED IN REVOCATION OF BEER LICENSE PROCEEDING

23 July 1953

Under the provisions of G. S. 15-27 evidence obtained by the use of an illegal search warrant cannot be used in the trial of any action, but this would not prevent the evidence from being used by the Board of County Commissioners on the issue of revoking a beer license.

CRIMINAL PROCEDURE; ISSUANCE OF WARRANTS BY JUSTICE OF THE PEACE
RETURNABLE BEFORE A RECORDER'S COURT

24 July 1953

Chapter 141 of the Session Laws of 1953 specifically authorizes a justice of the peace to issue a warrant to any court inferior to the superior court having jurisdiction within the same county.

JURY TRIAL; MAYOR'S COURT, FRANKLINTON; JURY FEE

24 July 1953

Under Chapter 333 of the Session Laws of 1953, the purpose of the advance deposit is to pay the jurors, and the defendant should not be required to pay the jurors out of additional funds in case he is convicted.

PRACTICING MEDICINE; AUTHORITY OF BOARD OF MEDICAL EXAMINERS TO

ISSUE LICENSE WITHOUT EXAMINATION

24 July 1953

The Board of Medical Examiners of this State may not issue a license to practice medicine to an applicant who has passed an examination given by the National Board of Medical Examiners for the reason that G. S. 90-13 authorizes this procedure only in those cases where the applicant has passed an examination given by a board of another State.

MOTOR VEHICLES; DEALERS' LICENSES; USE BY PURCHASER, PENALTY

24 July 1953

When a dealer permits a purchaser of a motor vehicle from him to use the dealer's plates for a period exceeding ten days from the date of sale, the dealer is probably guilty of violating Subsection (c) of G. S. 20-111.

SCHOOLS; FINES, FORFEITURES AND UNCLAIMED FEES OF JURORS AND WITNESSES

24 July 1953

G. S. 115-183 provides that all moneys due jurors and witnesses which remain in the hands of the clerk of the superior court on the first day of January following the publication of a third annual report of the clerk showing the same, shall be paid over to the county treasury for the use of the school fund of the county.

ALCOHOLIC BEVERAGES; CONFISCATION OF VEHICLES USED IN ILLEGAL TRANSPORTATION OF LIQUOR

27 July 1953

G. S. 18-6 does not specify what officer shall make the sale of a motor vehicle ordered confiscated after seizure while being used in the illegal transportation of liquor. Therefore, it is thought that the court has the authority to designate the officer to make the sale. *STATE v. REAVIS*, 228 N. C. 18.

JUSTICES OF THE PEACE; PROFESSIONAL BONDSMEN

27 July 1953

Under the Public-Local Act regulating professional bondsmen in Rowan County, a justice of the peace cannot be an agent for a bonding company making criminal bonds.

COUNTY COMMISSIONERS; PRISONERS; ALLOWANCES FOR GOOD TIME

27 July 1953

The County Commissioners can allow a prisoner, sentenced to work around County buildings, five days of good time for each month, if the Commissioners find that he is faithful in the performance of his duties.

MUNICIPAL CORPORATIONS; CONTRACT TO CARE FOR HOSPITALIZATION OF INDIGENT POOR; AUTHORITY TO PAY BILL OF MAN SHOT BY CITY POLICE

27 July 1953

A municipal corporation can enter into a contract with a hospital for the hospitalization of the indigent poor. A municipal corporation is authorized to pay for the hospitalization of a man shot by the city police while carrying out their duties.

REGISTER OF DEEDS; AUTHORITY OF DEPUTY TO SIGN INSTRUMENTS
IN THE NAME OF

27 July 1953

A deputy register of deeds may sign instruments in the name of the register of deeds, by him as deputy.

LICENSE TAXES; MOTOR VEHICLE DEALER; TWO PLACES OF BUSINESS;
SECTION 153

27 July 1953

A motor vehicle dealer who sells and services motor vehicles at a location within a city and at another location outside the city limits must obtain a motor vehicle dealer's license for each location where he carries on such business.

POWELL BILL FUNDS; AUTHORITY OF MUNICIPALITIES TO MAKE CONTRACTS
FOR STREET IMPROVEMENTS IN ANTICIPATION OF POWELL BILL FUNDS

28 July 1953

Chapter 1127 of the Session Laws of 1953 specifically authorizes municipalities to enter into contracts for the purpose of maintenance, repair,

construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety per cent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of Powell Bill funds.

LICENSE TAX

28 July 1953

Automatic answering and recording service covered by the general exchange tariff of a telephone company upon approval by the North Carolina Utilities Commission is not subject to a levy by a city in the nature of a license or privilege tax as the same is covered by G. S. 105-120.

WILLS; DISSENT OF WIDOW; DISTRIBUTION UNDER G. S. 28-149(3)

28 July 1953

A will executed on July 14, 1951 contains the following item: "To my wife I leave such property as provided by law." The testator then proceeded to leave all the remainder of his property to nieces and nephews. Chapter 1078, Session Laws of 1951, which re-writes G. S. 28-149(3), became effectual on July 1, 1951, and is applicable to the estates of persons dying after said date. Chapter 1325, Session Laws of 1953, again re-writes G. S. 28-149(3), but Subsection (a) thereof makes no substantial change in the case in which the husband dies intestate, leaving surviving a wife but no children. From the language of the will, it is thought that it was the testator's intent to leave to his wife only such property as she would have taken under the law had he died intestate. Therefore, it is thought that G. S. 28-149(3) is applicable and the widow takes his entire estate, consisting of not more than \$2,000 in personal property, after the payment of all the debts and the costs of administration.

LIFEGUARDS AT PUBLIC SWIMMING PLACES

28 July 1953

There is no statutory requirement that lifeguards be on duty at recreation grounds and lakes or waters where people may go swimming.

ARCHITECTS; UNLICENSED ARCHITECTS MAY FURNISH PLANS FOR THE CONSTRUCTION OF BUILDINGS NOT EXCEEDING \$20,000.00 IN VALUE

28 July 1953

Under G. S. 83-12, an unlicensed person may furnish plans for the construction of residence or farm or commercial buildings of a value not exceeding \$20,000.00, provided such person preparing such plans and specifications shall identify the same by placing thereon the name and address of the person preparing such plans and specifications.

MARRIAGE LAWS; VOID AND VOIDABLE MARRIAGES

29 July 1953

The marriage of parties under the minimum age is voidable and not void *ab initio*. PARKS v. PARKS, 218 N. C. 245; SAWYER v. SLACK, 196 N. C. 697.

PUBLIC HEALTH; COUNTY HEALTH OFFICER; POWERS AND DUTIES

29 July 1953

It is thought that under G. S. 155-7(1), the county treasurer or county depository is the custodian of the funds of a county health department. G. S. 153-132 provides that county funds must be paid out on warrants drawn on the county treasurer or depository, signed by the head of the department, and countersigned and certified as to budget appropriations by the county accountant. Since the statute does not stipulate who is the head of the health department, it is thought that a county board of health may by resolution designate a disbursing officer, and it is thought that under most circumstances it is appropriate for the board to designate either the county health officer or the chairman, or both, as disbursing officers. It is thought that the county health officer does not have the authority to disburse county health funds without authorization from the board, and there seems to be no statutory requirement that the disbursing officer for a county health fund make bond.

NORTH CAROLINA STATE BOARD OF PHARMACY; G. S. 90-61; EXPERIENCE
REQUIRED NEXT PRECEDING APPLICATION

29 July 1953

The pharmacy law which admits to examination a person "who has had 15 years continuous experience . . . next preceding his application" must have had this experience immediately before the filing of the application.

BONDS OF MUNICIPALITIES AUTHORIZED BY VOTE; GOVERNING BODY NOT
REQUIRED TO ISSUE TOTAL AMOUNT OF BONDS AUTHORIZED

30 July 1953

Under the terms of the Municipal Finance Act, when an election is held authorizing the issuance of bonds for municipal purposes, and the voters of the municipality approve the issuance of such bonds, this approval is merely an authorization to the governing board of the town to issue bonds not in excess of the amount approved by the voters. There is no mandatory requirement that the governing board of a municipality issue the full amount or any portion of the amount of the bonds authorized by the vote.

MUNICIPAL CORPORATIONS; AUTHORITY TO PURCHASE PROPERTY OUTSIDE THE
CORPORATE LIMITS TO WIDEN A STREET

30 July 1953

A municipal corporation is not authorized to purchase property outside its corporate limits for the purpose of widening one of its streets adjacent thereto. Police jurisdiction over such property could only be acquired by an Act of the General Assembly.

AD VALOREM TAXATION; PERSONAL PROPERTY; PLACE OF LISTING

30 July 1953

Ordinarily all tangible personal property must be listed for ad valorem tax purposes at the place of residence of the owner. However, tangible personal property must be listed at the place where such property is situated, rather than at the residence of the owner, if the owner or person having control thereof hires or occupies a store, mill, dockyard, piling ground, place for the sale of property, shop, office, mine, farm, place for storage, manufactory or warehouse therein for use in connection with such property.

COUNTIES AND COUNTY COMMISSIONERS; AUTHORITY OF COUNTY COMMISSIONERS TO PLACE THE OFFICES OF CLERK OF THE SUPERIOR COURT, SHERIFF, REGISTER OF DEEDS, AND TAX DEPARTMENT ON A
FIVE-DAY WEEK BASIS

30 July 1953

The county commissioners of the several counties of the State may place the offices of the register of deeds, the sheriff, and the tax department on a five-day week basis. G. S. 2-24 prohibits such action with respect to the office of the clerk of the Superior Court.

SALES TAX; EXEMPTIONS; FOOD

30 July 1953

A manufacturer of barbecue who sells it in a container customarily used for such product and delivers it for consumption off the premises is not subject to a sales tax on account of such sale. A restaurant, or similar place which sells a prepared meal is subject to the sales tax on account of the sale of such meal even though the meal will be served to diners off the premises of such seller and the service will be by persons who are not the seller's employees.

- (1) PEDDLERS; WHOLESALE BEER DEALERS; SECTION 121
- (2) BEER AND WINE TAXES; WHOLESALERS; PEDDLER'S TAX

30 July 1953

A city may not levy a peddler's tax on wholesale beer dealers. The right to tax wholesale beer dealers is specifically provided for and limited under the provisions of G. S. 18-69.

MOTOR VEHICLES; HIGHWAY PATROL; COURTS

30 July 1953

A citation by a patrolman to the operator of a motor vehicle does not institute a criminal proceeding. The issuance of a warrant is necessary before there is a criminal proceeding.

MUNICIPALITIES; PUBLIC LIBRARIES; RECREATION SYSTEMS

31 July 1953

Under Article 8, Chapter 160, of the General Statutes, as rewritten by Chapter 721, Session Laws of 1953, it is thought that the Town of Canton may make contributions of nontax revenue for the maintenance of a library established by a corporation created for the purpose, and using a building leased by Champion Paper & Fibre Company. It is also thought that the Town may appropriate nontax revenues for an organized recreational system to be operated in connection with said building.

PARKING METERS; USE OF PROCEEDS FOR MUNICIPAL RECREATIONAL FACILITIES

31 July 1953

A special Act permitting a city to use the proceeds of parking meters for the maintenance of recreational facilities is not in conflict with G. S. 160-200 (31) nor is it in conflict with the Constitution of the State.

PUBLIC WELFARE; OLD AGE ASSISTANCE; AGE OF DEPENDENT CHILDREN;
ADMINISTRATIVE EXPENSES; DEDUCTIONS BY COUNTY AUDITOR

31 July 1953

After the budget of the county welfare department is approved and the county appropriation made, the county auditor does not have a legal right to make arbitrary deductions from the welfare agency's funds or to substitute his or her judgment as to the expenditure of the funds.

- (1) SALES TAX; 8½% LIQUOR TAX
- (2) BEVERAGE CONTROL ACT; 8½% TAX

3 August 1953

The 8½% tax on liquor imposed by G. S. 18-85 is in all respects a retail sales tax similar in legal effect to the ordinary 3% sales tax.

FRANCHISE TAX; SALE OF ELECTRICITY

4 August 1953

Whether an industrial corporation which purchases power from a power company and resells it to one or more other persons or corporations is subject to the 6% franchise tax imposed by G. S. 105-116 depends upon

whether the industrial corporation is engaged in the business of selling electricity. This term contemplates a corporation which is a public utility, which in turn requires service to the public as distinguished from resale to one or more individuals in isolated cases.

- (1) CIVIL PROCEDURE; NECESSITY FOR SUBPOENA OF WITNESS WHOSE NAME APPEARS ON WARRANT
- (2) AUTHORITY OF COUNTY COMMISSIONERS TO CONVEY PROPERTY FOR A NOMINAL SUM TO A TOWN TO BE USED FOR WIDENING A STREET

5 August 1953

When the names of witnesses appear on the back of the warrant, this is sufficient for an officer to subpoena the witnesses named thereon without the necessity of the issuance of a subpoena for the witnesses named.

A board of county commissioners is not authorized to convey for a nominal sum (far below the value of the property) a tract of land to a town for the purpose of widening a street. A county should require a consideration equal to a fair value of the property to be conveyed although in conveying this property to the town consideration could be given to any benefits which might accrue to the county by virtue of such conveyance.

MUNICIPAL HOSPITAL FACILITIES ACT; PUBLIC HOSPITALS; EXPENDITURE OF BALANCE OF PROCEEDS OF BOND ISSUE FOR HOSPITAL SUPPLIES

5 August 1953

The Board of Commissioners of Iredell County is authorized to expend proceeds of a bond issue for the equipping of the hospital constructed by it with expendable items.

SUNDAY LAWS; CLOSING BUSINESS ESTABLISHMENTS

6 August 1953

Under G. S. 160-52, municipalities may enact ordinances regulating the pursuit of ordinary business callings on Sunday.

LIBRARIES; BOOKMOBILES; COUNTY COMMISSIONERS; LIABILITY FOR TORTS COMMITTED BY DRIVER OF BOOKMOBILE

6 August 1953

The board of trustees of a county library are authorized and should carry liability insurance on bookmobile operated by them.

SPECIAL SCHOOL TAX ELECTION; TIME OF ELECTION

6 August 1953

The County Board of Commissioners is authorized to fix the date for the holding of an election on the question of whether a special tax shall

be levied to support the schools of a school district. The statute does not forbid the holding of such an election within any specified period before or after the State-wide bond election to be held on October 31, 1953.

SCHOOL LAWS; COMPULSORY ATTENDANCE IN SCHOOLS; NOT APPLICABLE TO
CHILD 16 YEARS OF AGE

6 August 1953

The compulsory attendance law does not apply to a child who has reached the age of 16 years.

LICENSE TAX; MUNICIPALITIES; FARM PRODUCTS

7 August 1953

G. S. 160-53 authorizes the Board of Commissioners of a municipality to establish and regulate markets. However, this statute provides that the municipal authorities may not impose any tax on wagons or carts selling farm products, garden truck, fish or oysters on the public streets of the town. Section 121 of the Revenue Act, paragraphs (c) and (g) provide that a municipality may not levy a license tax upon a person, firm or corporation, his or its bona fide agent or employee, for the sale of farm products raised on the premises owned or occupied by such person, firm or corporation.

JUSTICES OF THE PEACE; PERFORMANCE OF DUTIES OUTSIDE OF TOWNSHIP;
ELECTIONS; PERSON BEING A CANDIDATE FOR MORE THAN ONE OFFICE

7 August 1953

A Justice of the Peace may perform the duties of his office anywhere in the county in which he is elected.

PUBLIC OFFICES; WOMEN HOLDING SEAT IN SENATE AND HOUSE OF
REPRESENTATIVES

7 August 1953

Women are eligible for all public offices, including seats in the General Assembly.

ELECTRICAL CONTRACTING; CONTRACTORS; AUTHORITY OF PROPERTY OWNER
TO WIRE HIS OWN HOUSES

10 August 1953

One making electrical installations on his own property and not engaged in the regular business of an electrical contractor is not required to obtain a permit under G. S. 87-43. If, however, a person engages in the business of building houses for rent or for sale, he must obtain such a permit or he must regularly employ one or more electricians or mechanics for the purpose of making the necessary electrical installations.

ATTENDANCE OFFICERS; RIGHT OF BOARD OF EDUCATION TO APPOINT ONE OF
ITS MEMBERS AS SUCH

10 August 1953

A Board of Education of a county cannot appoint one of its own members as an enforcement officer as to do so would be a violation of G. S. 14-234.

MUNICIPAL BOUNDARIES; METHOD OF ESTABLISHING AND EXTENSION

11 August 1953

What are municipal boundaries is a question of fact to be determined by the municipality and interested citizens. Municipal boundaries can be extended only as provided by Article 36 of Chapter 160 of the General Statutes.

LICENSE TAXES; GASOLINE PUMPS; SECTION 153 OF THE REVENUE ACT

11 August 1953

State license tax on a filling station pump located 8/10 of a mile from the corporate limits of Winston-Salem is \$50, the same as though the pump were located within the corporate limits.

SALES AND USE TAX; EXEMPTION; INSULIN SOLD ON PRESCRIPTION;
REFILLS WITHOUT NEW PRESCRIPTION

11 August 1953

When insulin is sold on prescription and the prescription is subsequently "refilled" such sale is exempt from the sales tax provided the pharmacist keeps adequate records thereof.

AD VALOREM TAXATION; REVALUATION; IMPROVEMENTS TO REAL PROPERTY;
RETROACTIVE REVALUATION NOT PERMITTED

11 August 1953

When property has increased in value to the extent of more than \$100.00 by virtue of improvements since the last assessment, such property may be re-assessed in other than a quadrennial revaluation year. However, such revaluation is not retroactive with respect to a preceding year when the taxing authorities could have revalued but failed to do so.

AD VALOREM TAXATION; PERSONAL PROPERTY; EXEMPTION; TOBACCO
STORAGE; TAXATION AT 60% TAX RATE; RESOLUTION ADOPTED
AFTER MARCH 31ST

11 August 1953

G. S. 105-294.1 provides that certain agricultural products may be taxed at 60% of the regular ad valorem rate if the Board of County Commissioners of the county where such property is listed determines that such

property is held by a manufacturer or processor for manufacturing or processing and that such property is of such a nature as to require storage and processing for more than one year in order to age or condition it for manufacture provided this is entered on the minutes of the Board on or before March 31st of any year. It is the opinion of the Attorney General's office that the requirement of entry on the minutes before March 31st is directory rather than mandatory and, if determination is made and entered on the minutes subsequent to March 31st and prior to the time the tax rate is fixed, the same will be valid.

MOTOR VEHICLES; PENALTIES; PUNISHMENT FOR SPEEDING

12 August 1953

Speeding is punishable by a fine of not more than \$100 or by imprisonment for not more than 60 days or both.

INCOME TAX; INDIVIDUALS; RESIDENT; INCOME EARNED IN ANOTHER STATE

12 August 1953

If a resident of North Carolina receives compensation for personal services rendered in another state or taxing jurisdiction but pays no income tax thereon to such other state or jurisdiction, the compensation so received must be reported to the State of North Carolina and the income tax paid thereon.

SALES TAXES; MOTOR VEHICLES

12 August 1953

There is no sales or use tax imposed on account of the sale of a used car by the former owner to a used car dealer if a sales or use tax has already been paid on account of such car. When a used car is purchased from a used car dealer it may not be registered in this State until a 3% use tax (\$15 maximum) is paid thereon unless a certificate is presented from a registered dealer in this State showing that such tax has been paid to him. When a used car is sold by one registered dealer to another registered dealer for resale the transaction is a wholesale sale and subject to the tax of one-twentieth of 1% of the proceeds.

MOTOR VEHICLES; MEMBERS OF THE HIGHWAY PATROL; EFFECT OF CITATION

12 August 1953

The practice followed by members of the State Highway Patrol of issuing a citation to a motorist found in violation of the Motor Vehicle laws, instead of immediately swearing out a warrant, is based upon the administrative practice of the Department. If the defendant abuses this courtesy the practice is to issue a warrant, arrest him and bring him to the court.

MUNICIPAL CORPORATIONS; ELECTION IN THE QUESTION OF
CHANGE OF FORM OF GOVERNMENT

12 August 1953

Elections called upon the adoption of a new plan of government are required to be called and held by the board of county commissioners of the county in which the city concerned is located. The cost of holding such elections should be borne by the municipality concerned.

MUNICIPAL CORPORATIONS; RESIDENCE REQUIREMENTS OF
CHIEF OF POLICE AND OTHER POLICEMEN

12 August 1953

The chief of police and other policemen of a town are required to be residents of the town in which they serve in such capacity.

MUNICIPAL CORPORATIONS; RESIDENCE REQUIREMENTS OF
CHIEF OF POLICE AND OTHER POLICEMEN

12 August 1953

The chief of police and other policemen of a town are required to be residents of the town in which they serve in such capacity.

MUNICIPAL CORPORATIONS; PRISONERS; LIABILITY OF MUNICIPAL
CORPORATION FOR COST OF MAINTAINING PRISONERS

12 August 1953

There is no liability on the part of a municipality to provide room and board and other costs in connection with the upkeep of prisoners. This is a liability of the county. See *BOARD OF EDUCATION v. HENDERSON*, 126 N. C. 689.

COURTS; JUVENILE; ASSISTANT CLERK OF SUPERIOR COURT
MAY SERVE AS JUVENILE JUDGE

12 August 1953

An Assistant Clerk of the Superior Court is authorized to act and perform the functions of Juvenile Judge.

MUNICIPAL CORPORATIONS; INITIATIVE, REFERENDUM, AND RECALL

13 August 1953

The provisions of Article 22 of Chapter 160 of the General Statutes apply only to those municipalities of the State which have adopted one of the plans of government set out in said Article.

MEMBER OF COUNTY BOARD OF EDUCATION; COMPENSATION;
FROM WHAT FUNDS PAID

14 August 1953

The per diem and mileage of not exceeding five members of the county board of education are paid from State funds. The per diem with regard to any additional members of the county board of education must be paid from county funds. County boards of education cannot increase compensation of members of the board in excess of \$5.00 per day and mileage.

PUBLIC CONTRACTS; AWARDS OF BIDS; CONSIDERATION
OF TIME OF PERFORMANCE

14 August 1953

Under GS 143-129, the time of performance of a public contract can be taken into consideration in awarding the bid, and if the time element is important, the authorities can award the contract to the next lowest bidder who agrees to perform the work in the shorter period of time. Careful consideration, however, should be given to appraise the differences in the time elements and also the differences in the bids.

- (1) VETERANS PREFERENCE; G. S. 128-15
(2) PAY INCREASE GRANTED BY GENERAL ASSEMBLY OF 1953
NOT APPLICABLE TO LOCAL EMPLOYEES

14 August 1953

- (1) The Veterans Preference Act applies to employees of the State Highway Commission, although such employees are classified as temporary.
(2) The 10% salary increase voted by the 1953 Legislature applies to teachers and State employees and not to county employees.

COUNTY BOARD OF ELECTIONS; DUTIES; AUTHORITY OF BOARDS
TO PURCHASE EQUIPMENT AND SUPPLIES

14 August 1953

A county board of elections could not make expenditures for office space, clerical hire or for other purposes unless budgets including a provision for these amounts have been approved by the board of county commissioners either at the time of the fixing of the annual budget or by some supplemental or amended budget.

COSTS; STATUTE OF LIMITATIONS

17 August 1953

There is no statute of limitations applicable to the collection of court costs arising out of a criminal prosecution. Every person convicted or confessing himself guilty, shall pay the cost of the prosecution and if such

costs are not paid, it is the duty of the Court to order a *capias* issued for the arrest of the defendant.

GUARDIAN AND WARD; APPOINTMENT OF NONRESIDENT GUARDIANS

17 August 1953

Although the statutes do not expressly do so, I am of the opinion that there is implicit in the statutes a distinction between guardians of the person of infants and guardians of their estates. It is generally held, except in states whose codes are based on civil law, that natural guardians or "guardians by nature or nurture" are guardians only of the person of the infant and, in the absence of appointment by the court as guardians of the estates of their wards, have no control or authority of such estates.

VITAL STATISTICS; FEES OF LOCAL REGISTRAR

17 August 1953

Under the provisions of Chapter 480 of the Session Laws of 1949, the fee for reporting vital statistics in Bladen County was increased from 50 cents to 75 cents.

CRIMINAL PROCEDURE; WARRANTS RETURNABLE BY JUSTICES OF THE PEACE

17 August 1953

Under the provisions of Chapter 141 of the Session Laws of 1953, warrants issued by magistrates may be made returnable before any other magistrate of the county or before any court inferior to the superior court having jurisdiction within the same county. This Act is not mandatory but merely authorizes justices of the peace to follow this procedure.

AD VALOREM TAXATION; STATUTE OF LIMITATIONS ON COLLECTION

18 August 1953

A municipality within a county subject to the provisions of Section 1721.1 of the Machinery Act is subject to a continuing ten-year statute of limitations in the collection of ad valorem taxes, subject to certain exceptions for pending foreclosure actions and street and sidewalk improvements as set forth in Section 1721.1.

SALES TAX; MACHINES DISPENSING HARD BOILED EGGS

18 August 1953

Sales of hard boiled eggs through coin-operated dispensing machines are exempt from the sales tax unless such machines are located in restaurants, cafes, et cetera, or other places where prepared meals are sold or served, within the meaning of subsection (i) of G. S. 105-169.

MUNICIPAL CORPORATIONS; PRIVILEGE LICENSE TAXES;
BOTTLED GAS DEALERS

18 August 1953

Under the provisions of G. S. 160-56, municipalities may levy a reasonable privilege license tax on the business of dealing in bottled gas.

MUNICIPALITIES; POWER TO PASS ORDINANCE PROHIBITING OR RESTRICTING
THE KEEPING OF DOGS WITHIN A MUNICIPALITY OR A PART THEREOF

18 August 1953

In view of the provisions of G. S. 160-200 and the various subsections thereof, and *STATE v. HORD*, 122 N. C. 1092; *STATE v. STOWE*, 190 N. C. 79; *LAWRENCE v. NISSON*, 173 N. C. 359, and *TURNER v. NEW BERN*, 187 N. C. 541, it is thought that the Town of Lake Waccamaw has the authority to pass a valid ordinance restricting the area in which dogs may be kept within the town and restricting within reasonable limits the number of dogs that may be kept on any lot in the town. However, it is doubted that the courts would sustain an ordinance entirely prohibiting the keeping of dogs anywhere within the limits of a town the size of Lake Waccamaw.

SCHOOLS; ENLARGEMENT OF LOCAL TAX DISTRICT UNDER G. S. 115-192

19 August 1953

G. S. 115-192 provides that upon a written petition by a majority of the governing board of any district, the county board of education, after approving the petition shall present the same to the board of county commissioners and ask for an election on the question of the enlargement of the boundary lines of the district so as to include any contiguous territory, and an election in such new territory may be ordered and held under rules governing elections for local taxes. If such election carries, new territory is added to the original district and a tax is levied on the property in the new territory of the same rate as that previously being levied in the original district. When two or more non-local tax districts are to be added to a local tax district, it is thought that the election should be held in the new territory as a whole and not by districts. *PERRY v. COMMISSIONERS*, 183 N. C. 387; *HICKS v. COMMISSIONERS*, 183 N. C. 394; *VANN v. COMMISSIONERS*, 185 N. C. 168.

It is also thought that when non-local tax territory is added to a local tax district, all schools in the new territory become a part of the enlarged district, that is, the white schools may not be added while the Negro schools are excluded because taxes may not be levied according to races.

1. BEER AND WINE; HOURS OF SALE; AUTHORITY OF MUNICIPALITY
TO REGULATE CLOSING HOURS
2. MUNICIPALITIES; RESPONSIBILITY FOR PERMITTING SCHOOL
CHILDREN TO ACT AS JUNIOR POLICEMEN
- 3 MUNICIPALITIES; AUTHORITY TO PREVENT THE OPENING OF THE STREET

20 August 1953

It is thought that the board of commissioners of a municipality may not change the hours for the sale of beer except as provided by G. S. 18-107.

There seems to be no statutory authority for a municipality to permit school children to act as Junior Policemen. If such children are appointed, the municipality would not be liable to third persons for their negligence in the performance of their duties. *MOFFITT v. ASHEVILLE*, 103 N. C. 237; *COLEY v. STATESVILLE*, 121 N. C. 301; *McILHENNEY v. WILMINGTON*, 127 N. C. 146; *HOBBS v. WASHINGTON*, 168 N. C. 293; *PARKS v. PRINCETON*, 217 N. C. 361; *GENTRY v. HOT SPRINGS*, 227 N. C. 665.

However, on the authority of *BETTS v. JONES*, 203 N. C. 590, it is thought that members of the governing body of the town might be personally responsible if they knowingly employ incompetent children to act in this capacity. If such a child sustains an injury in the course of his employment, he may be covered by the provisions of the Workmen's Compensation Act.

If a developer of real property opens private streets on property sold to purchasers, the same will not become public until dedicated by the owner and accepted as such by the municipality by proper resolution of the governing body.

PYROTECHNICS; EXHIBITION OF FIREWORKS AT FAIRS, ETC.

20 August 1953

Under the provisions of Article 54 of Chapter 14 of the General Statutes, it is unlawful for any person, firm or corporation to purchase, sell, deal in, transport or possess pyrotechnics in this State.

G. S. 14-410 makes an exception to this law and provides that pyrotechnics may be exhibited, used or discharged at public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations, provided the exhibition of such pyrotechnics is under the supervision of experts who have previously secured written authority from the board of county commissioners of the county in which such pyrotechnics are to be exhibited.

BANKS; INVESTMENT OF CORPORATE STOCKS

20 August 1953

Banks are not prohibited by law from investing in stocks of corporations except as provided by G. S. 53-47 and G. S. 53-46. G. S. 53-47 prohibits any banks from investing its capital stock in any other state or national bank, with certain exceptions set out in this section.

CORPORATIONS; INSTITUTION OF PROCEEDINGS FOR DISSOLUTIONMENT BY
ATTORNEY GENERAL UNDER G. S. 55-126; METHOD OF DISSOLVING
CONTROVERSY WITH DIRECTORS WHEN EVENLY DIVIDED
AND UNABLE TO FUNCTION

20 August 1953

It is doubtful that the Attorney General has authority to institute an action to dissolve a private corporation by reason of failure of the corporation to provide three directors as required by its by-laws and by statute, due to a deadlock in the vote of the board. A possible solution would be a petition to the superior court under G. S. 55-114.

MUNICIPAL CORPORATIONS; AUTHORITY TO PURCHASE PROPERTY OUTSIDE
THE CORPORATE LIMITS TO WIDEN THE STREET

20 August 1953

A municipality has a right to purchase land outside the corporate limits and adjoining the municipality for the extension of the city streets, as authorized by G. S. 160-204, and by the decision in the case of *HIGH POINT v. CLARK*, 211 N. C. 607. QUERY: Would police jurisdiction extend outside the corporate limits of the town?

SUNDAY LAWS; CLOSING BUSINESS ESTABLISHMENTS

20 August 1953

Under G. S. 160-52, municipalities may enact ordinances regulating the pursuit of ordinary business callings on Sunday.

AD VALOREM TAXATION; PERSONAL PROPERTY TAXATION;
LIABILITY OF MEMBERS OF THE MILITARY SERVICE

21 August 1953

Under the Soldiers' and Sailors' Civil Relief Act, a resident is deemed not to have lost his residency solely by virtue of living elsewhere under military orders, and a non-resident is deemed not to have acquired residency in North Carolina solely by virtue of being in this state under military orders, for ad valorem taxation purposes.

MOTOR VEHICLES; DRIVER'S LICENSE; PERIOD OF SUSPENSION OR REVOCATION;
G. S. 20-16.1 AS REPEALING G. S. 20-16 (A) (9)

21 August 1953

When an operator is convicted of speeding 65 miles an hour and within a year is again convicted of speeding 65 miles per hour, the Department of Motor Vehicles must suspend his license for a period of 30 days under the provisions of G. S. 20-16.1 but the Department has the authority to suspend his license for a period of not less than 60 days nor more than 6 months under the provisions of G. S. 20-16 (a) (9). The provision of G. S.

20-16.1 stating that "the provisions of this section shall not prevent the suspension or revocation of a license for a longer period of time where the same may be authorized by other provisions of law" destroys the possibility of the passage of G. S. 20-16.1 acting as a repealer of any of the provisions of G. S. 20-16.

SEAL; SUPERIOR COURT; REGISTER OF DEEDS

24 August 1953

Construing together G. S. 147-28, 147-30, 161-9 and 153-9(34), it is thought that the Board of County Commissioners of each county has the authority to adopt the design for the county seal and that the emblem on the seal of the Register of Deeds shall be the same as that on the seal of the Clerk of the Superior Court. The above statutes set forth the language required to be used on each of said seals.

MOTOR VEHICLES; BUSINESS DISTRICT; RESIDENTIAL DISTRICT; POWER OF MUNICIPALITIES; ARRESTS; CITY POLICE

25 August 1953

(1) A business district is defined in G. S. 20-38 (a) to be the territory contiguous to a highway where seventy-five per cent or more of the frontage thereon for a distance of three hundred (300) feet or more is occupied by buildings in use for business purposes.

(2) A residential district is defined by the same statute to be the territory contiguous to a highway not comprising a business district, where seventy-five per cent or more of the frontage thereon for a distance of three hundred (300) feet or more is mainly occupied by dwellings or by dwellings and buildings used for business purposes.

(3) Under G. S. 20-169, municipal authorities may enact an ordinance for the regulation of traffic by means of signaling devices on any portion of the highway where traffic is heavy or continuous. Thus, a municipality may adopt an ordinance establishing a traffic light at an intersection where the traffic is such as to make this a reasonable regulation.

(4) A traffic light which shows only red and green alternatively, without any intermediate yellow light, is lawful.

(5) When the jurisdiction of a municipal recorder's court has been extended to the township limits the police officers of the city have the same power to make arrests for crimes committed within the township as does the sheriff. Otherwise, when an offense is committed within the city and the police officer pursues the offender beyond the limits of the city without a warrant for his arrest the officer is in the same position as a private citizen after passing the city limits.

(6) The fine and costs paid by a defendant tried by a Justice of the Peace should be handled in the same way whether the defendant was arrested by a city policeman or by any other officer, and also whether the defendant is charged with the violation of a municipal ordinance or with the violation of a State law.

- (1) MOTOR VEHICLES; MUNICIPALITIES; SPEED REGULATIONS
- (2) BEER; MUNICIPALITIES; CLOSING TIME

25 August 1953

A municipality may not fix speed limits for motor vehicles except as provided in G. S. 20-141 with reference to streets which are not parts of the State highway system or except at intersections at which an engineer and traffic investigation shows that the customary speed limit fixed by the motor vehicle law is too high.

A municipality may not fix the closing hour for the sale of beer except between 11:30 p.m. on Saturday and 7:00 a.m. on the following Monday.

DIVORCE FROM BED AND BOARD; CUSTODY OF CHILDREN; HABEAS CORPUS

25 August 1953

While there is no case on the subject it is thought that habeas corpus can be used to determine the custody of children where the parents are living separate and apart from each other; the mother has custody of the children but the father threatens to obtain the children and take them out of the State and beyond the jurisdiction of the courts of this state.

ADOPTION; DIVORCE; CONSENT OF DIVORCED PARENT

25 August 1953

In adoption proceedings the fact that the natural parents are divorced does not dispense with the requirement that the consent of such natural parents to the adoption must be obtained.

AD VALOREM TAXATION; PURCHASE IN MIDYEAR FROM EXEMPTED ORGANIZATION; DUTY TO PAY TAXES FOR FULL YEAR

26 August 1953

Under the provisions of Section 302 of the Machinery Act, a non-exempt purchaser who purchases property in March, 1953, from an exempt owner is required to pay ad valorem taxes on such property for the entire fiscal year beginning July 1, 1953.

ADOPTION; FINDING OF ABANDONMENT PROCESS

26 August 1953

The adoption law provides that the court of adoption, which is the Clerk, can make a finding as to whether or not a parent or parents have abandoned a child, and it is not necessary for the Superior Court to pass upon such an issue.

CRIMINAL LAW; CONTRIBUTING TO THE DELINQUENCY OF A MINOR

26 August 1953

Before an adult can be convicted of contributing to the delinquency of a minor, the minor must have been adjudged to be delinquent, and where a warrant is issued before a finding of delinquency is made, the solicitor may take a nol pros until the question of delinquency is determined.

WARRANT; SEARCH WARRANT; SUFFICIENCY IN SEARCH FOR
INTOXICATING LIQUOR

26 August 1953

The provisions of G. S. 18-13, relating to search warrants for the purpose of searching for whiskey, are not governed by the provisions of G. S. 15-27, since G. S. 18-13 contains the elements of probable cause that are required in such cases, and an examination of the application for the search warrant by the issuing officer is not required since the taking of the oath to the required affidavit is sufficient.

LIBRARIES; COVERAGE OF LIBRARIAN UNDER SOCIAL SECURITY ACT

26 August 1953

Libraries organized under Article 8 of Chapter 160 of the General Statutes, as rewritten by Chapter 721 of the Session Laws of 1953, are considered to be political subdivisions or instrumentalities of Government for the purpose of coverage of such library employees under the Social Security Enabling Act of this State.

DIVORCE; RESIDENCE REQUIREMENTS

26 August 1953

Under Chapter 50 of the General Statutes, in order that divorce proceedings may be instituted in this State, the plaintiff or the defendant in the action must have been a resident in this State for a period of six months prior to the institution of the action.

MUNICIPAL CORPORATIONS; AUTHORITY TO REGULATE POOL ROOMS

27 August 1953

Under the provisions of G. S. 160-200 (33) the board of aldermen of a municipality has authority to license, prohibit and regulate pool and billiard rooms, and, in the interest of the public morals, revoke the license for the privilege of operating such rooms.

CRIMINAL LAW; EVIDENCE; TESTIMONY OF WIFE ON CHARGE
OF CRIME AGAINST NATURE

27 August 1953

Where the husband is indicted on a charge of crime against nature alleged to have been committed against his wife, the wife is not a competent witness against the husband.

FEDERAL TAXATION; MANUFACTURERS EXCISE TAX; REHABILITATION CENTER
FOR THE BLIND, BUTNER, N. C. AS STATE INSTRUMENTALITY

28 August 1953

The Rehabilitation Center for the Blind at Butner, North Carolina is an agency and instrumentality of the State of North Carolina.

UNITED STATES LANDS; FOREST RESERVES; JURISDICTION OF STATE COURTS

28 August 1953

Construing together G. S. 104-5 and Section 480, Title 16, United States Code Annotated, it is thought that the Federal and State Courts have concurrent jurisdiction of crimes committed on National Forest Reserves.

MOTOR VEHICLES; DRIVERS LICENSES; SECOND OR SUBSEQUENT CONVICTION;
CONVICTION OF DRUNKEN DRIVING PRIOR TO JULY 1, 1947

28 August 1953

A conviction prior to July 1, 1947 of driving under the influence of an intoxicating liquor or narcotic drug cannot be used in determining whether a motor vehicle operator has been twice convicted of that crime for purposes of the three year revocation period upon two convictions of such crime.

MOTOR VEHICLES; DRIVERS LICENSES; OPERATION AFTER REVOCATION OR
SUSPENSION; OPERATION WITHOUT LICENSE; OPERATION AFTER EXPIRA-
TION OF REVOCATION PERIOD BUT BEFORE REISSUANCE

31 August 1953

An operator who operates a motor vehicle after the expiration of a revocation period but prior to reissuance of his license is guilty of driving without a license and is not guilty of driving after license revoked.

MOTOR VEHICLES; DRIVERS LICENSES; ARMED FORCES; MEMBERS OF;
VALIDITY OF LICENSE BEYOND EXPIRATION DATE

31 August 1953

The operator's license of a member of the armed forces coming within the language of the proviso to Subsection (f) of Section 20-7 of the General Statutes remains valid until the expiration of thirty days from the date of his discharge.

SUPPLEMENTAL BUDGET; FUNDS AVAILABLE

31 August 1953

Under G. S. 115-356 objects of expenditure in the school budget designated as maintenance of plant and fixed charges shall be supplied from fines, forfeitures, penalties, poll taxes, dog taxes, etc. However, when necessity shall be shown and upon approval by the county or city board of education and the State Board of Education, such funds may be used to supplement any object or item of the current expense budget. Of course such budget must also be approved by the local tax levying authorities under the provisions of G. S. 115-361(a).

AD VALOREM TAXES; HOSPITALS; DEDUCTIONS AND EXEMPTIONS

31 August 1953

Real property owned by a non-stock, non-profit hospital and used for hospital purposes is exempt from ad valorem taxation. Real property of a private hospital is not exempt from property taxation but bills for services rendered indigent residents may be deducted from the hospital taxes under the conditions set forth in G. S. 105-298.

MUNICIPALITIES; POLICE OFFICERS; RESIDENCE; DE FACTO OFFICERS

31 August 1953

In spite of the 1951 amendment to G. S. 160-25, it is thought that a police officer is required to be a qualified voter within the municipality he serves. North Carolina Constitution, Article VI, Section 7. G. S. 163-25. *BARLOW v. BENFIELD*, 231 N. C. 663.

However, it is thought a police officer, though not a qualified voter of a municipality, when once appointed by the proper authorities is at least a *de facto* officer and his acts are just as effective as if he were a resident and qualified voter of the municipality. Such office cannot be challenged collaterally but only through a *quo warranto* proceeding brought for that purpose. *IN RE WINGLER* 231 N. C. 560. Article 41, Chapter 1 of the General Statutes.

LICENSE TAXES; EDUCATIONAL ZOO TRAIN; SECTION 106 OF
THE REVENUE ACT

31 August 1953

A zoo exhibited for educational purposes under the sponsorship of local civic organization is subject to the payment of license taxes under Section 106 of the Revenue Act.

INCOME TAXES; TRUSTS AND ESTATES; DUTY TO FILE RETURN; NON-RESIDENT
TRUSTEE WITH NORTH CAROLINA BENEFICIARY

1 September 1953

A non-resident trustee holding for North Carolina beneficiaries a trust corpus located outside of North Carolina is not required to file an income tax return when all of the trust income is distributed annually.

DRIVERS' LICENSES; COURT, POWER OF; JURISDICTION OF JUSTICE OF THE
PEACE OVER SPEEDING

1 September 1953

A Justice of the Peace and a Notary Public do not have jurisdiction to try cases involving speeding on the highway.

MOTOR VEHICLES; COURTS, POWER OF; JURISDICTION OF JUSTICE OF THE
PEACE OVER DRIVING WITHOUT LICENSE

1 September 1953

A Justice of the Peace does not have jurisdiction over the offense of operating a motor vehicle without an operator's license.

SCHOOLS; ENLARGEMENT OF CITY ADMINISTRATIVE UNIT WHEN THE UNIT
HAS NOT VOTED A SPECIAL SCHOOL TAX; PROCEDURE FOR VOTING
ON A SPECIAL SCHOOL TAX

1 September 1953

It is thought that no election under G. S. 115-192 is required to enlarge the boundaries of a city administrative unit which has not voted a special school tax under G. S. 115-361. In such case the procedure is simply separate resolutions of the city and county boards of education and the approval of the State Board of Education under G. S. 115-352.

The maximum special school tax that may have voted under G. S. 115-361 would seem to be fifty cents on the one hundred dollars valuation of property as set out in G. S. 115-186. When there is a county-wide special tax under the provisions of G. S. 115-207 et seque, it is doubtful that a city administrative unit is authorized to vote more than a thirty cents special school tax. G. S. 115-210.

Children allowed to attend schools of another administrative unit, but without having been transferred by the State Board of Education in conformity with the provisions of G. S. 115-352, may be charged tuition.

AD VALOREM TAXATION; MILITARY PERSONNEL; NON-RESIDENT PURCHASING
HOME NEAR MILITARY RESERVATION

1 September 1953

Under the provisions of the Soldiers and Sailors Civil Relief Act, a non-resident member of the armed forces living in N. C. solely by virtue of military orders is not subject to personal property ad valorem taxes,

whether or not his home state requires payment of such taxes. No such exemption exists for civilian employees of the armed forces living off the military base.

- (1) MUNICIPAL TAXATION; PRIVILEGE LICENSE TAXES; ENFORCING PAYMENT
- (2) COUNTY TAXATION; COUNTY LICENSE TAXES; ENFORCING PAYMENT

3 September 1953

The penal provisions of G. S. 105-109 with respect to engaging in business without paying the appropriate license tax are made applicable by that section to county license taxes but not to city license taxes. However, G. S. 14-4 makes the violation of a town ordinance a misdemeanor and a person who violated an ordinance requiring the payment of a license tax would be subject to criminal prosecution under G. S. 14-4.

LICENSE TAXES; LAUNDRIES; FIRM FURNISHING COVERALL AND OVERALL SERVICE; SECTION 150

3 September 1953

A company which furnishes coveralls and overalls to certain individuals and firms on a rental basis, picking up the soiled items and leaving clean ones periodically, and which does its own laundry work and no other, is not subject to the State license tax which is imposed with respect to laundries.

POLL TAX; GARNISHMENT; DELINQUENT TAXES

3 September 1953

Taxes with respect to which garnishment proceedings may be used includes poll taxes.

EXECUTORS AND ADMINISTRATORS; COMMISSIONS ALLOWED UNDER CHAPTER 855; SESSION LAWS OF 1953

3 September 1953

It is thought that the expression "gross value of an estate" as used in Chapter 855, Session Laws of 1953, amending G. S. 28-170 dealing with the commissions allowable to a personal representative, means the total value of the personal property plus that part of the proceeds of the sale of real property necessary to pay the remainder of the debts and the costs of administration. G. S. 28-57; G. S. 28-58; DENTON v. TYSON, 118 N. C. 542; LINKER v. LINKER, 213 N. C. 351.

SCHOOLS; TRANSPORTATION; LIABILITY OF STATE FOR INJURIES TO CHILDREN RIDING SCHOOL BUSES WHEN SUCH CHILDREN LIVE WITHIN 1½ MILES OF THE SCHOOL

3 September 1953

G. S. 115-376 requires the transportation of school children living more than one and one-half miles from the school to which they have been

assigned. However, the policy of the State Board of Education for the past twenty years has permitted school children living within walking distance to be transported when there is room on the bus without displacing children required to be transported. Resolution of the State School Commission under date of September 28, 1933.

From the foregoing, it is thought that children living within one and one-half miles of the school, but who are actually being transported, are entitled to all the protection afforded by Article 49, Chapter 115, of the General Statutes, and Article 31, Chapter 143, of the General Statutes. (Tort Claims Act of 1951.)

CLERK OF THE SUPERIOR COURT; COMMISSIONS ALLOWED UNDER G. S. 2-26

3 September 1953

Under the language of next to the last paragraph of G. S. 2-26, it is thought that a clerk is not entitled to commissions on surplus funds paid into his office under the provisions of G. S. 45-21.31 or the surplus from a sale by a commissioner under an execution to satisfy a judgment for the enforcement of a material furnisher's lien, the sale being conducted under Article 29(a) or 29(b) of Chapter 1 of the General Statutes.

MUNICIPAL ORDINANCES; POWER TO PROHIBIT THE KEEPING OF HORSES WITHIN A TOWN OR PART OF A TOWN

3 September 1953

A municipality may pass an ordinance to prohibit the keeping of horses within a certain minimum distance of dwellings and other inhabited buildings located within the corporate limits.

SCHOOLS; ELECTION OF TEACHERS; ALLOTMENT BY STATE BOARD OF EDUCATION

4 September 1953

Construing together G. S. 115-354-359-355, it is thought that the contracts of all teachers in public schools are subject to the allotment of teachers made by the State Board of Education and that the distribution of teachers elected in a particular administrative unit is a matter for the local school authorities.

WARRANTS; STATUTE OF LIMITATIONS

4 September 1953

Warrants issued for the commission of misdemeanors which are over two years old are barred by the Statute of Limitations.

CRIMINAL LAW, WARRANTS, AND NUMBER OF ACCOUNTS

4 September 1953

A warrant charging assault, public drunkenness, and disorderly conduct contains but two counts, assault being one count and public drunkenness and disorderly conduct being the second count.

POLICE OFFICERS' AUTHORITY TO INSPECT HOTEL LOBBIES, HALLWAYS,
APARTMENT HOUSES, BOARDING HOUSES, AND GUEST REGISTERS

4 September 1953

Police officers upon reasonable grounds have a right to go into a hotel lobby to make an investigation and they can go into such lobby without a warrant. *STATE v. RAY*, 217 N. C. 167.

An apartment house and a boarding house may not always fall within the category of public places. Therefore, if an officer were going to enter an apartment house or boarding house he should have a warrant for a person whom he reasonably suspects of being therein.

A police officer does not have the right at his mere whim to conduct an inspection of the guest registers at hotels, motels, inns, and other similar places. If the officer has a warrant for a person and reasonably believes that such person is in the hotel then in such event the officer would have a right to inspect the guest register in order to ascertain if the person were in the hotel, for a warrant may be executed at any place where the person named therein can be found.

MOTOR VEHICLES; DRIVER'S LICENSE; DRIVING WHILE LICENSE REVOKED

8 September 1953

The suspension or revocation provided by G. S. 20-28 for driving while the defendant's license is suspended or revoked is mandatory.

COUNTIES; MUNICIPALITIES; ANNUAL AUDITS BY CERTIFIED PUBLIC
ACCOUNTANTS; PUBLIC ACCOUNTANTS; COMPETITIVE BIDDING
NOT REQUIRED

8 September 1953

Auditing contracts let by counties and municipalities may be let without public bidding.

STATE HIGHWAY FUNDS; DIVERSION

8 September 1953

The appropriation and expenditure of revenues from motor fuels taxes and from motor vehicle license taxes are subject to legislative control, as there is no constitutional provision as to the purposes for which such funds may be expended, other than the requirement that it shall be for a public purpose. Gasoline and motor fuel inspection taxes of one-fourth of one cent per gallon are required to be paid for the cost of providing such inspection and the balance paid into the general fund.

MARRIAGE LAWS; EPILEPTICS

8 September 1953

Persons subject to epileptic attacks may be married in this State only upon the recommendation of one or more practicing physicians who specialize in psychiatry and only after eugenic sterilization has been performed on such epileptic.

MOTOR VEHICLES; COURTS; COSTS

9 September 1953

1. All fees properly included in the bill of costs for arrests and service of process made by a member of the State Highway Patrol should be remitted to the county authorities.
2. No fee may be added to the bill of costs unless there is statutory authority therefor.
3. No arrest fee may be added to the bill of costs when the defendant has not been arrested but has merely been given a citation by a highway patrolman.

SALES TAX; TAXABILITY OF STICKS, TWINE AND FUEL OIL USED IN CURING TOBACCO

9 September 1953

Sales of fuel oil to farmers for use in curing tobacco are exempt from the retail sales tax.

LICENSE TAXES; MECHANICAL RIDES; SECTION 131 OF THE REVENUE ACT

9 September 1953

Operators of individual rides in toy "space ships" and "mechanical horses" are required to purchase county licenses, if levied by a proper ordinance, for each ride.

- (1) ABOLISHING RECORDER'S COURT, DALLAS, N. C.
- (2) WATER METER SERVICE

9 September 1953

- (1) A Recorder's Court created under G. S. Article 24, Subchapter VI, Chapter 7, may be abolished upon compliance with G. S. 7-212.
- (2) Meters installed under an ordinance of a town may be charged against a consumer, and failure to pay after reasonable notice may result in discontinuance of service by the town.

TRUSTEES; COMMISSIONS

11 September 1953

The 5% commission allowed by G. S. 128-170 to executors, administrators and trustees and other personal representatives, is limited to 5% of the original value of the trust, as the statute states that the commission is based upon "the amount of receipts, including the value of all personalty when received."

MUNICIPAL CORPORATIONS; SALE OF REAL PROPERTY TO AMERICAN LEGION

10 September 1953

G. S. 160-59 provides the exclusive method by which a municipality may dispose of property. This section provides that such sales may be made only after 30 days' notice and at public outcry.

SALES AND USE TAX; INGREDIENTS OF MANUFACTURED PRODUCTS;
PACKAGING; MILLS AND MILL MACHINERY

10 September 1953

Under the applicable statutes and regulations relating to the sales and use tax the following articles when sold and used for the purposes and in the manner set out below would be subject only to the wholesale rate of sales tax, and if purchased from outside the State would be subject to no tax as there is no wholesale use tax:

Staples used for closing corrugated boxes used for packing merchandise for shipment by the manufacturer.

Machines used to put the staples in these boxes.

Staples used for attaching labels to overalls, etc., used instead of sewing.

Machines for putting these staples into the garments. Staples used in fabricating furniture, doors, etc., said merchandise being made for sale.

Machines to put these staples in.

SALES AND USE TAX; EXEMPTIONS; OPHTHALMIC EQUIPMENT

10 September 1953

Sales of ophthalmic equipment to optometrists and physicians are exempt from sales tax. Ophthalmic equipment includes lenses, frames, cases and any equipment which would be used by an optometrist or physician in treating, diagnosing or examining any eye condition, and any other equipment otherwise used in remedying an eye abnormality or condition which requires such treatment or remedy.

AD VALOREM TAXATION; PERIOD OF LIMITATION ON GARNISHMENT FOR
PERSONAL PROPERTY AND POLL TAX

10 September 1953

The City of Sanford may garnish for personal property and poll taxes due for any years subsequent to 1926, under the general law, subject to the limitation of Section 1713 of the Machinery Act.

AD VALOREM TAXES; IMPORTS; PROPERTY IN TRANSIT ON JANUARY 1ST

10 September 1953

Property which is being imported and which is part of a cargo of a ship enroute to a North Carolina seaport on January 1st would not be subject to any North Carolina ad valorem property taxes.

AD VALOREM TAXES; PROPERTY NOT OWNED ON JANUARY 1ST

10 September 1953

A person who acquires an automobile subsequent to Jan. 1st of any year is not liable for property tax with respect to said automobile for that year inasmuch as property is listed for taxation on the basis of ownership as of Jan. 1st of the tax listing year.

MOTOR VEHICLES; COURTS; JUSTICES OF THE PEACE

10 September 1953

1. The offenses of speeding and of driving while under the influence of intoxicating liquor or narcotic drugs are beyond the jurisdiction of a justice of the peace.
2. A justice of the peace has no greater power to arrest than does a private citizen. He may not arrest for speeding or drunken driving.
3. Upon receipt of a complaint charging commission of any crime, a justice of the peace must examine under oath the complainant and his witnesses, and issue a warrant if, but only if, it appears that a crime has been committed.

MOTOR VEHICLES; HIGHWAY PATROL; ARREST FEES

10 September 1953

To the extent that an arrest fee for an arrest by a member of the Highway Patrol is properly taxed as part of the bill of costs, such fee should be remitted to the county authorities.

CRIMINAL LAW; JUDGMENT; SUSPENDED SENTENCE; CONDITION OF
SUSPENSION REQUIRING ATTENDANCE AT TRAFFIC SAFETY SCHOOL

10 September 1953

A convicted traffic violator may be required to attend a safety school located in a vicinity accessible to such violator as a condition of suspension of sentence.

MOTOR VEHICLES; SUSPENSION OF LICENSE; FAILURE TO COMPLY WITH
FINANCIAL RESPONSIBILITY ACT

11 September 1953

When a driver's license has been revoked under the Uniform Driver's License Act, thereafter his license has been reissued upon expiration of the period of the original revocation and the filing of proof of financial responsibility, subsequently for failure to maintain proof of financial responsibility his license is again suspended, and thereafter he drives a motor vehicle upon the highways before obtaining another reissuance of

his license, such driver is guilty of violating G. S. 20-7, which prohibits the operation of a motor vehicle on the highway without a driver's license. He is not guilty of violating G. S. 20-28, which forbids the operation of a motor vehicle upon the highway during the period of a suspension or revocation imposed under the Driver's License Act, as distinguished from a suspension under the Financial Responsibility Act.

AD VALOREM TAXES; PERSONAL PROPERTY; SERVICEMEN; SOLDIERS AND
SAILORS CIVIL RELIEF ACT; VOLUNTARY LISTING

11 September 1953

Although a member of the armed forces who comes to North Carolina under military orders does not become a resident solely by reason of moving to this State, he does become a resident when he undertakes to vote or to institute a civil action requiring residence as a basis for instituting such suit or when he does any other act evidencing a clear intent to become a resident. When he becomes a resident he becomes liable for ad valorem property taxes in the same manner and to the same extent as any other resident. In the absence of a more convincing explanation, any member of the armed forces who voluntarily lists taxes should be regarded as thereby evidencing an intent to become a resident and he should be held liable for ad valorem property taxes in the same manner as any other resident.

CONSTABLES; RESIDENCE IN TOWNSHIP WHERE ELECTED

13 September 1953

In order for a constable to be eligible for his office, he should be a duly registered voter in the township in which he is elected.

CLAIM AND DELIVERY IN JUSTICE OF THE PEACE COURT

14 September 1953

Claim and Delivery proceedings are ancillary remedies and if they are improperly asked they may be denied or dismissed, having no effect on the action itself which should go on if the plaintiff is entitled to any other remedy.

EDUCATION; COMPULSORY SCHOOL LAW; EXEMPTIONS

14 September 1953

The public school law does not contain any exemption which permits a child to work one or two days a week and then attend the public schools for the balance of the time.

MOTOR VEHICLES; RULES OF THE ROAD; JURISDICTION OF JUSTICE OF THE
PEACE; POWER TO RECEIVE BOND

14 September 1953

While a Justice of the Peace has authority to take bond and bind over an operator charged with speeding, only the court to which the defendant is bound over has authority to forfeit the bond.

INTOXICATING LIQUOR; PURCHASE FROM SOURCE OTHER THAN ABC STORE;
POSSESSION

14 September 1953

It is a violation of law to purchase liquor in this State from any source except from a lawfully operated ABC store, and it is also a violation of the law for a person who purchases liquor from an ABC store to sell this liquor to another individual. The purchase of liquor by one individual from another individual, even though the tax is paid, is unlawful and also results in unlawful possession and transportation.

MUNICIPAL CORPORATIONS; AUTHORITY TO CONVEY PROPERTY ACT

14 September 1953

A municipal corporation in the absence of a public-local statute is not authorized to sell municipal property at private sale and without consideration. Under the statutes of this State a municipal corporation, unless authorized by public-local act, must dispose of its property, after due advertisement, by public auction to the highest bidder.

MUNICIPALITIES; CONSTRUCTION OF PROJECTS COSTING NOT IN EXCESS
OF \$15,000

14 September 1953

G. S. 143-129 does not apply to expenditures by municipalities not in excess of \$15,000 on any repairs, completed project or building, if the work is performed through its duly authorized officers and agents.

COUNTIES AND COUNTY COMMISSIONERS; AUTHORITY TO APPROPRIATE PUBLIC

FUNDS TO DEFRAY THE EXPENSES OF A PARADE FOR RETURNING
WAR VETERANS

14 September 1953

There is no authority for a board of county commissioners to appropriate public funds to be used in defraying the expenses of a parade to be put on in honor of returning veterans and prisoners of the Korean Conflict.

SCHOOLS; COUNTY-WIDE CURRENT EXPENSE BUDGET

14 September 1953

When a city administrative school unit is coterminous with the city limits, the city council is the tax levying authority so far as the local supplemental school budget is concerned, but county-wide current expense budgets are simply approved by the county commissioners, and the county commissioners constitute the tax levying authorities. G. S. 115-361-362-363(a)-363(c).

MUNICIPALITIES; OWNERSHIP OF SIDEWALKS ON STATE HIGHWAYS;
CONTROL OF SIGNS THEREON

15 September 1953

Municipalities have complete authority to control by valid ordinances the erection of signs and other obstructions or structures over the sidewalks along or adjoining State highways maintained in such municipalities by the State Highway & Public Works Commission. Such authority is not withdrawn from the municipalities by the Powell Bill or G. S. 136-30 et seq, or by G. S. 136-18(t).

AD VALOREM TAXES; PERSONAL PROPERTY; LIEN; NO LIEN AFTER
BONA FIDE SALE

17 September 1953

When no levy has been made for property tax purposes on personal property, no lien for taxes on such property exists after a bona fide sale thereof for value.

AD VALOREM TAXATION; PERSONAL PROPERTY; RESIDENT WHO TAKES
PROPERTY OUT OF STATE; SERVICEMAN WHO TAKES
PROPERTY OUTSIDE OF STATE

18 September 1953

Personal property taken outside the State by a North Carolina resident to be kept for an indefinite period, including January 1st of the tax year, would lose its North Carolina property tax situs.

CONSTITUTIONALITY OF CHAPTER 305 PUBLIC-LOCAL LAWS OF 1919, AS
AMENDED BY CHAPTER 477 PUBLIC-LOCAL LAWS OF 1921,
PROHIBITING THE EXHIBITIONS OF CARNIVALS IN GUILFORD
COUNTY, EXCEPT IN CONNECTION WITH A FAIR
HELD BY FAIR ASSOCIATIONS

18 September 1953

Chapter 477 Public-Local Laws of 1921, amending Chapter 305 Public-Local Laws of 1919, prohibiting the showing of carnivals in Guilford County except in connection with a county fair, is probably constitutional.

MOTOR VEHICLES; LICENSE PLATES; PERMANENT REGISTRATION;
TUBERCULOSIS ASSOCIATIONS

18 September 1953

An x-ray unit of the Alexander-Catawba-Lincoln District Tuberculosis Association, Inc. is not entitled to permanent registration under the motor vehicle act.

MOTOR VEHICLES; LICENSE PLATES; AUTHORITY OF MUNICIPALITY TO
REQUIRE DISPLAY OF MUNICIPAL PLATE

18 September 1953

A municipality acting under its power to levy a \$1.00 license tax on motor vehicles can pass a proper ordinance requiring the display on the motor vehicle of the license tags issued upon payment of the tax.

COURTS; ASSISTANT JUDGE OF THE RECORDER'S COURT OF BRUNSWICK
COUNTY; LEAVE OF ABSENCE

18 September 1953

While there seems to be no statutory provision for the appointment of an assistant, associate or substitute judge of a recorder's court, created under the provisions of Article 25, Chapter 7, of the General Statutes, it would seem that the county commissioners are authorized to grant a leave of absence to the Judge upon compliance with the provisions of G. S. 128-40 and to appoint an acting or substitute judge during the continuance of the leave of absence of the regular Judge.

CRIMINAL LAW; VAGRANCY

18 September 1953

The fact that a female defendant indicted under G. S. 14-336(2) was married would not of itself require a dismissal of the action.

MOTOR VEHICLES; DRIVERS' LICENSES; FINANCIAL RESPONSIBILITY;
OPERATION AFTER SUSPENSION; OPERATION DURING SUSPENSION
FOR FAILURE TO SATISFY JUDGMENT

21 September 1953

An operator convicted of operating a motor vehicle during a period when his license is suspended under the Financial Responsibility Act for failure to satisfy a judgment should be punished under G. S. 20-272 rather than under G. S. 20-28.

MOTOR VEHICLES; RULES OF THE ROAD; SPEED OF AMBULANCES AND
FIRE TRUCK

21 September 1953

The only statute regulating the speed of ambulances and fire trucks within cities and towns is G. S. 20-145.

MOTOR VEHICLES; EQUIPMENT; VALIDITY OF MECHANICAL TURN SIGNALS

21 September 1953

Mechanical turn signals approved by the Department of Motor Vehicles are a valid means of signaling in North Carolina.

MUNICIPALITIES; ORDINANCES REQUIRING REMOVAL OF WEEDS AND
TRASH FROM LOTS

21 September 1953

A municipality may enact valid ordinances relating to the removal of noxious weeds from vacant lots within such municipality. Such ordinances are authorized by G. S. 160-55 and G. S. 160-200(8). A municipality may not by ordinance create a criminal offense.

MUNICIPAL CORPORATIONS; AUTHORITY TO REGULATE GAS STORAGE TANKS

21 September 1953

Under the general authority of municipalities to pass ordinances for the public welfare, it is thought that a municipality has the authority to pass a reasonable ordinance regulating the location of gasoline storage tanks under its public streets. G. S. 160-200(11); G. S. 160-52; PARSONS v. WRIGHT, 223 N. C. 520; FAYETTEVILLE v. DISTRIBUTING COMPANY, 216 N. C. 596; SHUFORD v. WAYNESVILLE, 214 N. C. 135; WAKE FOREST v. MEDLIN, 199 N. C. 83.

MUNICIPAL CORPORATIONS; NUISANCES; POLICE POWER

21 September 1953

Under its general authority to pass ordinances for the public welfare, it is thought that a municipality has the authority to pass an ordinance requiring either public or private alleys to be kept open for the purpose of fire protection and the removal of trash therefrom. G. S. 160-55; G. S. 160-200(6)-(10)-(26); 25 Am. Jur. (highways) Section 8, page 343; PARSONS v. WRIGHT, 223 N. C. 520.

AD VALOREM TAXATION; TIME WHEN TAXES BECOME DELINQUENT

21 September 1953

Although it is not free from doubt, it appears that taxes become delinquent within the meaning of Chapter 827 of the Session Laws of 1953 only upon final settlement by the tax collector.

AD VALOREM TAXES; PERSONAL PROPERTY; PLACE OF LISTING;
SCHOOL TEACHER

22 September 1953

Ordinarily personal property must be listed for ad valorem taxation at the place of the residence of the owner. G. S. 105-302 provides further: "For purposes of this section the residence of a person who has two or more places in which he occasionally dwells shall be the place at which he resided for the longest period of time during the year preceding the date as of which property is assessed." In applying this statute to the situation of a public school teacher, it is necessary to consider each individual situation separately. In other words, the personal property of a school teacher would ordinarily be listed at the place of her permanent or voting residence. However, if a school teacher has lived in the county where she is teaching at the beginning of the tax listing year for a longer period during the preceding year than she lived in any other place during such preceding year, then the personal property of such teacher should be listed in the county where she is teaching.

AD VALOREM TAXATION; PERSONAL PROPERTY; NON-RESIDENT OF TOWN

22 September 1953

A person who is not a resident of a town and who owns no real property in such town and who does not keep any personal property in such town is not liable for any ad valorem property taxes with respect to such town.

DOG TAXES; CREDIT OF RABIES VACCINATION FEE; EFFECT OF 1953 REPEAL
WITH RESPECT TO BACK TAXES

22 September 1953

The repeal of G. S. 106-372.1 and the amending of G. S. 106-372 by the 1953 General Assembly, eliminating provisions for credit of a rabies vaccination fee against county dog tax is prospective only in application and does not prohibit the granting of such credit with respect to back taxes.

MOTOR VEHICLES; OPERATION AFTER REVOCATION OR SUSPENSION;
HIGHWAY, WHAT CONSTITUTES

22 September 1953

- (1) A person whose driver's license is reissued following a period of suspension, and is thereafter again suspended for failure to maintain proof of financial responsibility, and who drives a vehicle upon the highway before his license is again reissued is not guilty of driving while his license is revoked and cannot be convicted under G. S. 20-28, but he is guilty of operating a vehicle without a valid driver's license and can be convicted under G. S. 20-7.

- (2) The driveway of a service station is not, as such, a part of the highway, so the statute forbidding reckless driving does not apply to driving upon such driveway. However, in the event the driving occurred upon a portion of the driveway which is included in the definition of "street and highway" contained in G. S. 20-38 (cc) such person could be convicted.

CLERK OF THE SUPERIOR COURT; FEES OF CLERK OF ROBESON COUNTY FOR
AUDITING FINAL ACCOUNT OF TRUSTEE

22 September 1953

The fee of the Robeson County Clerk of Superior Court for auditing and recording the final account of sales of real property pursuant to a power of sale is fixed by G. S. 2-26, specifying that such fee shall not exceed \$15.00.

MUNICIPAL CORPORATIONS; TAXATION, WATER AND SEWAGE FACILITIES

22 September 1953

The fact that water and sewage facilities are not furnished within a certain portion of a municipality will not prevent the collection of taxes within such territory. See *BANKS v. RALEIGH*, 220 N. C. 35.

HIGH POINT MERCHANTS' PATROL, INC.; PRIVATE DETECTIVES GOING ARMED
IN A BODY; SPECIAL POLICEMEN APPOINTED BY THE GOVERNOR

23 September 1953

There is no law which would authorize a private corporation to use its employees as peace officers or policemen for the police protection of property of other corporations and which would permit such employees to patrol the streets and highways, wear a distinct uniform with badge, carry sidearms, and operate under the supervision and control of an organization other than the corporation whose property they undertake to protect. There is a grave possibility that such operations would be violative of G. S. 14-276, which prohibits private detectives going armed in a body, and G. S. 14-277, which makes it unlawful for any private person to impersonate a peace officer.

ADOPTION; ATTORNEY EXAMINING PARENTS' CONSENT AND
CONSENT OF SUPERINTENDENT OF WELFARE

23 September 1953

Under the adoption law an attorney may examine consents of parents or of superintendents of welfare for the purpose of determining their legal validity, but such attorney has no authorization under the law to disclose to the adoptive parents the identity of the natural parents.

VETERANS' BONUS

24 September 1953

There is no provision in this State for a bonus to veterans of World War II.

SCHOOLS; AUTHORITY OF TRUSTEES OF ADMINISTRATIVE UNIT TO EXPEND
NON-TAX FUNDS FOR THE REPAIR OF A PRINCIPAL'S HOME

24 September 1953

Funds were donated by patrons of a city administrative school unit for the purpose of employing an additional teacher. When it developed that the funds were insufficient to pay the salary of the teacher, each person donating funds agreed that the funds might be used for the repair of the principal's home, the property being owned by the Board of Trustees. It is thought that the board of trustees may use the funds for this purpose upon approval by the Board of County Commissioners. G. S. 115-84, G. S. 115-157(b) and G. S. 153-77(a).

CLERK OF THE SUPERIOR COURT; JURISDICTION OF SURETIES ON PROSECUTION
BONDS; CORPORATE SURETIES

24 September 1953

Under Rule 2 of the Rules and Practice of the Superior Court personal sureties must appear before the Clerk for the purpose of making the necessary justification on the bond. Surety companies may execute such bonds before notary publics, and the Clerk, if he is satisfied that the surety is authorized to do business in the State, may accept same, or he may require the personal appearance of the agent of the surety company.

BOND ELECTIONS TO BE HELD ON OCTOBER 3, 1953; USE OF VOTING MACHINES

24 September 1953

Voting machines may not be used in the school and mental institutions bond elections to be held on October 3, 1953, on account of the limitations and restrictions in the bond acts.

HOMESTEAD AND PERSONAL PROPERTY EXEMPTIONS; PROCEDURE WHEN
DEBTOR OWNS ONLY ONE PIECE OF PERSONAL PROPERTY

25 September 1953

It appears that under G. S. 1-369 a debtor cannot claim as exempt a piece of personalty worth more than \$500.00, even though he owns no other property, although the statute is not clear. It appears that the property can be sold and \$500.00 of the proceeds paid to the debtor.

AD VALOREM TAXES; PERSONAL PROPERTY; PLACE OF LISTING;
AUTOMOBILES STORED OUTSIDE CORPORATE LIMITS

25 September 1953

Automobiles which are owned by the resident of a city are not subject to city ad valorem property taxes when such automobiles are stored outside the city limits.

AD VALOREM TAXATION; PERSONAL PROPERTY; EXEMPTIONS;
HOME CANNED FRUITS; PORK

25 September 1953

Home canned fruit and hams from hogs raised on the owner's farm are not exempt from ad valorem property taxation.

AD VALOREM TAXATION; PERSONAL PROPERTY; STATUTE OF LIMITATIONS;
PERSONAL PROPERTY TAX

25 September 1953

The ten year statute of limitations set out in G. S. 105-423.1 is applicable to taxes on personal property as well as real property taxes.

MUNICIPAL ORDINANCES; POOLROOMS

25 September 1953

A municipality has authority under G. S. 160-200(33) to enact ordinances regulating or prohibiting the operation of pool and billiard rooms within its territorial boundaries.

ADOPTION; ILLEGITIMATE CHILD AS STEPCHILD

25 September 1953

The amendment to the adoption law enacted by the General Assembly of 1953, defining the word "stepchild", is applicable to adoption proceedings instituted prior to the effective date of the Act.

CLERK OF THE SUPERIOR COURT; APPOINTMENT OF GUARDIAN

25 September 1953

G. S. 35-3 provides that guardians of veterans appointed under that section shall be subject to the same provisions of law as guardians of idiots, inebriates, lunatics and incompetent persons in this State. While a guardian appointed under the Veterans Guardianship Act has charge of only funds of his ward received from the Veterans Bureau, it is thought that when a guardian is appointed for a veteran under the provisions of

G. S. 35-3, such guardian has as full and complete charge of the property of his ward as if he had been appointed under the provisions of G. S. 33-7 and by complying with the provisions of Articles 3 and 4 of Chapter 33 of the General Statutes it is thought that such a guardian can sell or rent property belonging to his ward. COXE v. CHARLES STORES COMPANY, 215 N. C. 380 and GROVER v. WARE, 182 N. C. 553.

INTOXICATING LIQUORS; ABC ENFORCEMENT OFFICERS; POWERS AND IMMUNITIES IN ACTING OUTSIDE COUNTY OF THEIR APPOINTMENT

28 September 1953

Under the provisions of G. S. 18-45(o), it is thought that an ABC enforcement officer has no authority and therefore is not entitled to protection as an officer when acting in another county unless he has been invited to come to such other county by the sheriff or other law enforcement officer to assist in the enforcement of the prohibition laws. If such officer assists Federal officers in the enforcement of Federal liquor laws, he must be deputized by the Federal officers under regulations set up by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. Section 1261(a) Chapter 59, Title 18 of the United States Code Annotated.

INTERPRETATION OF G. S. 51-10(2); NON-RESIDENT APPLICANT

29 September 1953

A register of deeds is authorized to issue a marriage license to applicants under the provisions of G. S. 51-10(2) although the applicants may be non-residents and do not intend to live in North Carolina, if the register of deeds has the required certificate from a licensed physician as provided in the statute.

MUNICIPALITIES; ASSESSMENTS AGAINST ELECTRIC POWER COMPANY HOLDING EASEMENT ON ABUTTING PROPERTY

29 September 1953

A power company owning a right of way abutting a street in a municipality is not subject to assessment as an abutting owner for the cost of construction of a street adjoining such right of way.

SALES TAX; USED CARS

30 September 1953

When a used car dealer sells a used car the sale is subject to the sales tax unless either (1) the dealer acquired the car as a trade-in in a transaction in which the sales tax was paid on the full purchase price of the other car involved in the trade-in transaction, or (2) the car sold was acquired by the dealer by repossession.

BEER; HOME-BREW; OPERATING BREWERIES IN THIS STATE

1 October 1953

Under the language of G. S. 18-2, it is thought that the manufacture of home made beer or home-brew for personal consumption and not for sale is unlawful in this State. However, G. S. 18-67 makes it lawful to operate a brewery upon complying with the terms of that statute and paying to the Commissioner of Revenue the annual tax of \$500.

MUNICIPALITIES; AUTHORITY OF CITY POLICE TO MAKE ARRESTS FOR VIOLATION OF CRIMINAL LAWS WITHIN MUNICIPALITY

1 October 1953

Municipal police have authority to make arrests and enforce the criminal laws within the corporate limits to the same extent as a sheriff. Enforcement of criminal laws at Federal Post Office property depends upon the time such property was acquired and the jurisdiction maintained by the State over such property. See *STATE v. DEBERRY*, 224 N. C. 834.

MUNICIPAL TAXATION; VALIDITY OF ORDINANCE TAXING DELIVERY WITHIN CITY

1 October 1953

When an outside business firm sends a salesman into a city and the salesman solicits orders within the city, makes immediate delivery from his truck and collects for the order at that time, the city is entitled to levy a privilege license tax on such activity, within the limits of Section 121 of the Revenue Act. When an outside company sends a salesman into a city to solicit orders, the salesman takes orders and sends them to the company, the orders are filled by a later delivery from a truck, and the truck driver does not solicit orders or sell directly from the truck, the city cannot exact a privilege license for the privilege of engaging in these activities, at least where payment is made at a later time by the purchaser's mailing a check to the company. No opinion is expressed as to situations falling between these two extremes.

NOTARIES PUBLIC; FEES ALLOWED

2 October 1953

There seems to be no statute fixing fees to be charged by a notary public except that G. S. 10-8 fixes fifty cents as the fee to be charged for protesting a negotiable instrument. However, many notaries are guided by the provisions of G. S. 2-26 and G. S. 7-134, which statutes fix the fees that may be charged by the Clerk of the Superior Court and by Justices of the Peace.

INHERITANCE TAX; WIDOW'S YEAR'S SUPPORT

5 October 1953

The widow's year's allowance is property which passes by the intestate laws of this State and, therefore, is subject to the inheritance tax.

AD VALOREM TAXATION; EXEMPTION OF PRIVATE BUSINESS SCHOOLS

5 October 1953

The real property exemption of Section 600 (4) of the Machinery Act and the personal property exemption of Section 601 (3) of the Machinery Act apply to private business schools operated for profit.

MOTOR VEHICLES; EQUIPMENT; USE OF BUMPER SIGNS

5 October 1953

There is no law prohibiting the use of yellow reflecting signs on the bumpers of an automobile, although the size and quality of the reflecting sign might be such as to constitute negligence on the part of an operator driving at night. The use on such sign of any variation of the words "DIMMIT DAMMIT" might be construed to constitute a violation of the laws against obscene language and literature.

MOTOR VEHICLES; SERVICE OF PROCESS; RESIDENT WHO LEAVES THE STATE TO AVOID SERVICE OF SUMMONS

5 October 1953

Sections 1-98 through 1-98.4 of the General Statutes do not permit service of summons by publication or service of summons outside of the state upon a defendant who while a resident of North Carolina was involved in an automobile accident in North Carolina and thereupon left this state and acquired a residence in Georgia for the purpose of escaping service of summons in North Carolina. G. S. 1-105, providing a method for serving summons upon a non-resident motorist in an action growing out of an accident while such motorist is driving upon the highways of North Carolina, does not apply to a resident of North Carolina who is involved in such an accident and thereafter leaves the state and becomes a resident of another state. The Supreme Court of North Carolina apparently has not been called upon to decide whether G. S. 1-105 would permit service of summons upon the Commissioner of Motor Vehicles in the event that such former resident of North Carolina thereafter drives a motor vehicle upon the highways of this state and once more leaves the state before service upon him personally can be made.

MOTOR VEHICLES; DRIVER'S LICENSE; SECOND
CONVICTION FOR DRIVING DRUNK

5 October 1953

G. S. 20-19 (d) requires the Department of Motor Vehicles to revoke for three years the operator's license of a person when the Department receives notice that such person has been convicted a second time of driving under the influence of intoxicating liquor or a narcotic drug. In order to bring this statute into operation it is not necessary that the warrant under which the defendant was convicted the second time charge him with a second offense. The three-year penalty is not imposed upon those who have been convicted of a second offense, but is imposed upon those who have been twice convicted.

MOTOR VEHICLES; DRIVER'S LICENSE; EXEMPT VEHICLES

5 October 1953

One who operates upon a highway a truck from which the truck bed has been removed and to which a winch and boom have been attached, the purpose being to make the vehicle suitable for logging operations is required to have an operator's or chauffeur's license notwithstanding the fact that the vehicle is designed for use in logging operations and is driven upon the highways only at rare intervals and as an incident to moving the vehicle from one logging operation to another.

MUNICIPALITIES; AUTHORITY OF POLICE OFFICERS TO ARREST PERSONS
ON U. S. GOVERNMENT PROPERTY

5 October 1953

"The only area within a municipality in which there could be any question as to the right of municipal police to enforce the criminal laws of the State would be on Federal property, including the post office property. Whether or not the police would have authority to enforce criminal law on the post office property would depend upon the date of the acquisition of this property by the Federal government. See the case of *STATE v. DEBERRY*, 224 N. C. 834. In this case, the court held that the jurisdiction of the United States is exclusive over property in this State acquired by the Federal government for a post office from the enactment of the Public Laws of 1887 until the adoption of the statute which is now codified as G. S. 104-1 and G. S. 104-7."

CRIMINAL LAW; REVIEW OF THE CONSTITUTIONALITY OF CRIMINAL TRIALS

6 October 1953

The proceeding for the review of the constitutionality of criminal trials authorized by G. S. 15-217 is available only to a person imprisoned in one of the institutions specifically designated in that statute. It, therefore, is not available to a person imprisoned in a prison of the State of New York.

COUNTIES; PURCHASE OF SHORT WAVE RADIO FOR SHERIFF'S DEPARTMENT

7 October 1953

Counties may purchase short wave radio equipment for the sheriff's department. Three adjoining counties may enter into an agreement for two years to combine the activities of any departments of such counties for more effective service to the public, as authorized by G. S. 153-246.

LICENSE TAXES; TRADING STAMPS; SECTION 156

8 October 1953

There are no statutes prohibiting the use of premiums, gifts, or redeemable coupons as a means of promoting the sale of dairy products provided there is no misleading advertising and provided the products are properly labeled and meet the standards of purity required by law.

ELECTION LAWS; DISPOSING OF LIQUOR AT OR NEAR POLLING PLACES

8 October 1953

G. S. 163-202, which prohibits the sale of intoxicating liquor in the vicinity of polling places, does not apply to the giving away and sale of wine and beer.

SCHOOLS; TITLE TO SCHOOL PROPERTY IN CITY ADMINISTRATIVE UNITS

8 October 1953

G. S. 115-352 provides that title to property in a city administrative school unit shall be taken in the name of the trustees of such city administrative unit. In the Gastonia City Administrative Unit, the trustees are called commissioners. Chapter 14, Private Laws of 1927.

BAIL BONDS; AUTHORITY OF WIFE OF CHIEF OF POLICE TO
REPRESENT BONDING COMPANY

8 October 1953

G. S. 15-107, which prohibits certain officers and their wives from representing bail bond companies, does not by its terms include chiefs of police or their wives. However, it is considered as against public policy and violative of the spirit of this Act for the wife of a chief of police to represent a bail bond company in such matters.

COMMISSION FOR THE BLIND; CLERK OF THE SUPERIOR COURT;
APPOINTMENT OF GUARDIANS FOR BLIND PERSONS

8 October 1953

The provisions of the statute (G. S. 111-30) allowing the appointment of a guardian for a blind person to the extent of a grant from funds received from the State is based upon the position that the blind person is

unable to manage his own affairs and is to be construed as guardianship laws are generally construed. This statute does not conflict with any of our statutes dealing with insane persons, even though such insane persons should be blind.

SEAL; SUPERIOR COURT; REGISTER OF DEEDS

9 October 1953

Construing together G. S. 147-28, 147-30, 161-9 and 153-9(34), it is thought that the Board of County Commissioners of each county has the authority to adopt the design for the county seal and that the emblem on the seal of the Register of Deeds shall be the same as that on the seal of the Clerk of the Superior Court. The above statutes set forth the language required to be used on each of said seals.

- (1) PROCEDURE FOR ADOPTION OF MUNICIPAL ORDINANCES
- (2) CONSTITUTIONAL LAW; CLEAR PROCEEDS OF FINES AND
FORFEITURES TO SCHOOL FUND

9 October 1953

The procedure for the enactment of municipal ordinances is set forth in Article 19 of Chapter 160 of the General Statutes. There is no requirement that ordinances be numbered and sectioned; however, this is advisable. There is no requirement that ordinances be posted in several public places in the town.

The clear proceeds of all fines and forfeitures collected for violations of municipal ordinances are required to be paid into the school fund of the county in which such municipality is situated.

MOTOR VEHICLES; POWER OF COURTS; CONVICTIONS REQUIRING
SURRENDER OF LICENSE TO COURT

12 October 1953

The provision requiring a convicted operator to surrender his driver's license to the court applies only to those offenses set forth in G. S. 20-17.

MOTOR VEHICLES; RULES OF THE ROAD; SPEED LIMITATIONS;
HIGHWAY POST OFFICES

12 October 1953

A U. S. Highway Post Office is probably limited to 45 miles per hour speed on the highways, unless the vehicle is primarily employed in transporting passengers, in which case the speed limit is 55 miles per hour.

MOTOR VEHICLES; OVERLOADING; SECONDARY ROADS;
APPLICABILITY OF CRIMINAL PUNISHMENT

12 October 1953

The provision of G. S. 20-116 (e) providing for a criminal liability for overloading on a light-traffic highway was not repealed by Chapter 1092 of the Session Laws of 1953.

LIABILITY OF CHURCH FOR INJURY TO SCHOOL CHILDREN USING
CHURCH PROPERTY BY PERMISSION

12 October 1953

Would a church be liable for injuries caused by negligently defective buildings when public school children using such buildings, by consent of the church, are injured thereby?

The answer to this question would depend upon whether or not the children using the buildings would be considered to be beneficiaries of a charity. In the absence of court decision, this office hesitates to express any opinion about it.

CRIMINAL LAW; WORTHLESS CHECK; AIDING AND ABETTING IN
PROCURING ISSUANCE OF WORTHLESS CHECK

12 October 1953

Where a person loans money and procures the borrower to sign and deliver to him a postdated check or a currently dated check, but it is understood between both parties that the drawer or borrower does not have any money in or credit with the bank on which the check is drawn to pay same, the person loaning the money is subject to prosecution for aiding and abetting another person to draw, make, utter or issue such worthless check.

FRANCHISE TAXES; DOING BUSINESS; SOLICITATION

12 October 1953

A foreign corporation merely soliciting orders in this State for shipment out of the State is not required to domesticate.

ADOPTION PROCEEDINGS; CHILD HALF ONE NATIONALITY AND HALF
ANOTHER; JAPANESE-AMERICAN

13 October 1953

The laws of this State do not prohibit the adoption of a child born of American and Japanese parents.

CLERK OF THE SUPERIOR COURT; WILLS; PROBATE;
NUMBER OF WITNESSES REQUIRED

13 October 1953

Under the provisions of G. S. 31-3.3(a) and G. S. 31-18.1(a) (1) 1953 cumulative supplement, it is thought that a typewritten will witnessed by only one witness cannot legally be probated in North Carolina. Such a paper writing is insufficient to pass title to either real or personal property. IN RE PUETT, 229 N. C. 8; IN RE WILL OF MORROW, 234 N. C. 365.

DEPUTY CLERK SUPERIOR COURT; AGE REQUIREMENTS

13 October 1953

A deputy clerk of the superior court is a public officer, and in order to be eligible to hold a public office in North Carolina, a person must be at least 21 years of age.

AD VALOREM TAXES; PERSONAL PROPERTY; MEMBER OF
ARMED FORCES; AUTOMOBILE.

14 October 1953

Ordinarily personal property is subject to ad valorem taxation at the place of the residence of the owner.

AD VALOREM TAXATION; REAL PROPERTY;
BENEVOLENT ASSOCIATIONS AND LODGES ..

14 October 1953

A building together with the land actually occupied around the building owned by a benevolent association or lodge and used by such lodge or association exclusively for lodge purposes is exempt from ad valorem property taxation under the provisions of Subsection 6 of G. S. 105-296.

AD VALOREM TAXATION; PERSONAL PROPERTY; AUTHORITY TO TAX AT
DIFFERENT PERCENTAGES OF TAX RATE

14 October 1953

There is no statutory authority for taxing hogsheads of tobacco in storage at an arbitrary number of dollars per hogshead rather than applying the appropriate tax rate to the assessed valuation.

SPECIAL ASSESSMENTS; REDUCTION OF ASSESSMENT AGAINST CORNER LOTS

14 October 1953

The City of Durham may, by ordinance, change from 100 per cent assessment against corner lots to the proposition set out in Chapter 749 of the Session Laws of 1953 after the resolutions for doing the work on a 100

per cent assessment basis have been adopted and published but before the improvement has been begun.

AD VALOREM TAXATION; PERSONAL PROPERTY; EXEMPTIONS;
INVENTORY OF BAPTIST BOOK STORE

15 October 1953

When the proceeds from the sale of books at a book store owned by a Sunday School Board are used exclusively for religious and charitable purposes, it is possible that the courts might regard the inventory of the store as representing invested funds of a religious association and, therefore, exempt from ad valorem taxation under the provisions of Subsection (4) of G. S. 105-297.

AD VALOREM TAXES; PERSONAL PROPERTY TAXES;
NOT LIEN ON ESTATE BY ENTIRETIES

16 October 1953

No lien for the individual personal property taxes of a husband or of a wife attaches to property owned by the husband and wife as an estate by the entireties.

INCOME TAX; EXEMPTIONS; RESERVE AND NATIONAL
GUARD OFFICERS; RETIREMEN PAY

16 October 1953

Retirement pay of a member of the armed forces, as distinguished from disability pay, is subject to State income tax.

SALE OF ALCOHOLIC BEVERAGES ON PROPERTY WHERE THE FEDERAL GOVERN-
MENT HAS ONLY PARTIAL JURISDICTION OVER SUCH LANDS

16 October 1953

Where the United States does not have exclusive jurisdiction over land on which it has an Air Base, the provisions of the A.B.C. Act are applicable and it would be unlawful under the laws of this State to possess and dispense alcoholic beverages on such Air Base. STATE v. DEBERRY, 224 N. C. 834; G. S. 18-49.2.

SCHOOLS; SUPPLEMENTAL TAX ELECTION

16 October 1953

G. S. 115-188 requires a special registration for a supplemental school tax election held pursuant to the provisions of G. S. 115-361 or G. S. 115-362. G. S. 115-189 provides that the election may be carried by a majority of the votes cast instead of a majority of the registered voters as was the

requirement prior to the amendment of Article VII, Section 7 of the State Constitution in 1948.

(1) CLERK OF THE SUPERIOR COURT; PROBATE

(2) CONVEYANCES; ACKNOWLEDGMENT

16 October 1953

Since middle names and initials are not legal parts of a person's name, it is thought that when the grantor's name appears in a deed as "John W. Dunn" and he signs the instrument as "John Dunn" and acknowledges the same before a notary public, the clerk of the court is justified in probating the instrument. The same would be true when a middle name or initial is either supplied or omitted from the name as it appears in the body of the instrument. G. S. 47-14; G. S. 47-38; FREEMAN v. MORRISON, 214 N. C. 240; McCLURE v. CROW, 196 N. C. 657; BANK v. TALBERT, 192 N. C. 126; MADISON COUNTY v. COXE, 204 N. C. 58; STATE v. HESTER, 122 N. C. 1047; NEWBY v. EDWARDS, 153 N. C. 110 and Am. Juris. 38, Name. Paragraph 4, page 596.

COUNTY COMMISSIONERS; APPROPRIATION OF COUNTY REVENUE FOR REPAIRS
TO DISTRICT WATER AND SEWER LINES

16 October 1953

It is doubtful that a county has authority to use county-wide funds for the maintenance or repair of water and sewer lines owned exclusively by sanitary districts which are separate municipal corporations apart from the county.

ADOPTION; ABANDONMENT; FOREIGN JUDGMENT ADJUDICATING
NEGLECT AND DEPENDENCY; CONSENT

16 October 1953

A decree from a foreign state that adjudicates the fact that parents have neglected children who live in a state of dependency is not an equivalent of an adjudication that the parents have abandoned the children so as to dispense with the consent of the parents in an adoption proceeding.

JUSTICES OF THE PEACE; JURY DUTY

19 October 1953

Justices of the peace are not exempt from jury duty and are eligible to serve in such capacity.

CRIMINAL LAW; SEARCH WARRANTS; LEGAL SEARCH WITHOUT WARRANT

19 October 1953

Where an officer sees intoxicating liquor which is nontaxpaid in an automobile, he has a right to seize the car and arrest the defendant, and a search warrant is not necessary under such circumstances.

INHERITANCE TAXES; DEATH BENEFITS PAYABLE TO WIDOW; ESTATE OF
.....; ASHEVILLE POLICEMEN'S PENSION
AND RELIEF FUND

20 October 1953

Payments made by the Asheville Policemen's Pension and Disability Fund to the widow of an officer killed in the line of duty are not includable in the gross estate of the decedent officer for inheritance tax purposes.

MOTOR VEHICLES; DRIVERS LICENSES; CONVICTION;
WHAT IS; NOLU CONTENDERE

20 October 1953

Pending further clarification by our Supreme Court, this office is taking the position that a plea of nolo contendere to a charge of drunken driving requires that the defendant's license be revoked in accordance with G. S. 20-17.

INCOME TAXES; GROSS INCOME; DEDUCTIONS; SPIN-OFFS;
TREATMENT AS DIVIDEND

21 October 1953

A distribution to the stockholders in a spin-off is subject to income tax and the stockholders may treat the stock so distributed as dividend income for the purpose of taking a deduction under Section 322 (5) of the Revenue Act.

LICENSE TAXES; PHOTOGRAPHERS; SECTION 109

21 October 1953

No examination is necessary in order to engage in the business of a photographer in this State, but a photographer is subject to certain license taxes under the provisions of G. S. 105-41.

LICENSE TAXES; AUCTION SALES

21 October 1953

State License taxes on auction sales are limited to auction sales of real estate, auction sales of jewelry and silverware, and auction sales of "furs, objects of art, artware, glassware, silver plated ware, chinaware, gold, silver, precious or semi-precious stones, jewelry, watches, clocks, or gems of any kind."

AD VALOREM TAXATION; PERSONAL PROPERTY; TAX SITUS; SCHOOL
TEACHER'S AUTOMOBILE

21 October 1953

When a school teacher resides in a certain county on January 1st and has resided in said county for more than six months during the preceding year, said teacher's automobile is subject to personal property taxation in such county.

STATE AND FEDERAL TAXATION OF RETIREMENT PAY OF NORTH CAROLINA
STATE EMPLOYEES AND TEACHERS

21 October 1953

A North Carolina State employee's or teacher's retirement pay is by statute expressly made exempt from State taxes.

SCHOOLS; PROCEDURE FOR LOCAL TAX ELECTION UNDER G. S. 115-361.

22 October 1953

Under the provisions of G. S. 115-187, it is thought that when a city administrative school unit comprises all the territory included in two adjoining municipal corporations (Laurinburg and East Laurinburg), a supplemental tax election under the provisions of G. S. 115-361 must be called by the Board of County Commissioners and not by joint action of the governing bodies of the two towns.

It is also thought that under the last sentence of G. S. 115-188, the expenses of such election must be borne by the city administrative unit and not by the county.

AD VALOREM TAXES; PERSONAL PROPERTY TAXES; TOWN TAXES;
RESIDENCE

26 October 1953

A person who does not have any personal property in a certain town on January 1st and who does not become a resident of such town until after January 1st is not liable for any personal property taxes to that town for that year.

(1) AD VALOREM TAXATION; MEMBERS OF ARMED FORCES; EXEMPTIONS

(2) POLL TAXES; MEMBERS OF ARMED FORCES; EXEMPTIONS

26 October 1953

Members of the armed forces are exempt from poll taxes and local authorities are authorized to relieve members of the armed forces from the payment of interest and penalty in connection with delinquent ad valorem property taxes.

MOTOR VEHICLES; OVERLOADING; LIGHT-TRAFFIC HIGHWAY;
USE TO MAIN HIGHWAY

26 October 1953

The law does not permit movement of an excessive load over a light-traffic highway in order to reach a standard highway, although the Highway Commission may issue a permit for that purpose.

MUNICIPAL CORPORATIONS; TAXATION; WATER, SEWERAGE AND
OTHER FACILITIES

26 October 1953

The fact that water and sewerage facilities are not furnished within a certain portion of a municipality will not prevent the collection of taxes within such territory. See *BANKS v. RALEIGH*, 220 N. C. 35.

MUNICIPAL CORPORATIONS; ALLEYS; DEDICATION TO PUBLIC

27 October 1953

The mere use of an alley by the public does not constitute a dedication thereof by the true owner. In order for there to be a dedication, the use must be adverse and of right, manifested in some appropriate way by the properly constituted public authorities.

CRIMINAL PROCEDURE; APPEARANCE BOND; AUTHORITY TO ACCEPT BONDS
FROM DEFENDANTS TRIED IN A COUNTY RECORDER'S COURT AND
BOUND OVER TO THE SUPERIOR COURT

27 October 1953

Construing together G. S. 7-230, 7-225, 15-105 and 15-106, it is thought that the Judge of a County Recorder's Court has the authority to fix bond in cases where a defendant has been tried in the Recorder's Court and bound over to the Superior Court, provided defendant is not charged with a capital felony. G. S. 15-102(1).

It is also thought that under the provisions of G. S. 15-108 the Sheriff has authority to accept bonds in such cases provided the defendant is not charged with a capital felony.

In either of the above cases it would seem desirable to have the sureties justify before the Clerk of the Superior Court who is ex-officio Clerk of the Recorder's Court, and have the Clerk pass upon the solvency of the sureties.

MOTOR VEHICLES; DRIVER'S LICENSE; RENEWAL; MEMBERS OF
ARMED FORCES

27 October 1953

The driver's license of a member of the Armed Forces is automatically extended if the following conditions exist on his birthday in the fourth year after the license was issued:

(a) He was then a member of the Armed Forces of the United States, (b) he was on active duty, (c) the old license was properly issued, (d) he was stationed outside the State of North Carolina. If such conditions then existed the old license is extended until 30 days after his discharge from the Armed Services.

INHERITANCE TAX; CLERK SUPERIOR COURT; FINAL SETTLEMENT BY
ADMINISTRATOR

27 October 1953

Even though an administrator has filed his inheritance tax return and has paid the tax shown to be due thereon, the clerk who allows him to make final settlement of the estate without exhibiting a receipt from the Commissioner of Revenue for the inheritance tax is liable on his official bond for the amount of any additional inheritance tax found to be due from the estate.

CLERK OF THE SUPERIOR COURT; ADMINISTRATION OF ESTATE OF
MISSING PERSONS

27 October 1953

It is thought that the provisions of G. S. 28-1(3) are broad enough to include the estate of a person who has been absent for more than seven years and not heard from during that time by those who would be expected to hear from him if he were alive, even though such person is a non-resident of North Carolina, when such person has assets in the county in this State in which the proceedings are conducted. In such case proceedings to declare the person dead should be conducted as outlined in G. S. 28-2.1, G. S. 28-167 and Article 22, Chapter 28 of the General Statutes. 25 N. C. Law Review 423, 27 N. C. Law Review 410.

PROBATE AND REGISTRATION; AUTHORITY OF OFFICERS IN THE ARMED FORCES
OF THE UNITED STATES TO TAKE ACKNOWLEDGMENTS OF WIVES OF
ARMED FORCES PERSONNEL

27 October 1953

Construing the provisions of G. S. 47-2 with Article of War 2(11) it is thought that the officers of the armed forces of the United States listed in said statute have the authority to take the acknowledgment to a deed or other writing permitted or required to be registered, of the wife of a member of the armed forces living with her husband in Japan on property occupied by the armed forces of the United States.

CRIMINAL LAW; SECOND AND THIRD OFFENSES PUNISHABLE WITH GREATER
PUNISHMENT; PUBLIC DRUNKENNESS IN RICHMOND COUNTY

27 October 1953

Where an offense is punishable by greater punishment because of a previous conviction for the same offense, it is the duty of the State to

allege the previous offense in the warrant or indictment and to prove the same, and unless this is done the court is warranted in trying the case and considering the case as if it was the first offense.

ADOPTION; PRESUMPTION OF ADOPTION; PROOF OF ADOPTION

27 October 1953

There is no presumption that a child has been adopted by virtue of the fact that it has been taken into a home by husband and wife and treated as one of their own children over a period of many years, but, to the contrary, an adoption must be shown as any other fact.

LIBRARIES; PUBLIC CONTRACTS; BIDS ON BOOKMOBILE

27 October 1953

Where public libraries are purchasing a bookmobile, they are required to advertise for bids under the Public Contracts Act. They are not required, however, to prepare their specifications for a complete unit, but they can prepare for specifications and advertise for bids on the chassis for one unit and on the body of the bookmobile as another unit.

(1) LICENSE TAXES; PEDDLERS; EXEMPTION; DISABLED VETERANS; SECTION 121

(2) SALES TAX; HOUSE TO HOUSE SELLING

28 October 1953

A person who solicits orders from house to house and fills those orders at a later date is not a peddler. The Board of County Commissioners may exempt a disabled war veteran from the peddler's tax if such veteran has been a bona fide resident of this State for twelve or more months continuously.

PUBLIC CONTRACTS; G. S. 143-129; 143-131; SPLITTING OF CONTRACTS

28 October 1953

G. S. 143-131 prohibits splitting contracts for purpose of evading provisions of 143-129, but separate contracts can be made in good faith for separate undertakings for which funds are then available.

AD VALOREM TAXES; MUNICIPALITIES; FAILURE TO LIST; REMEDIES

28 October 1953

A city or town may set up its own machinery for securing tax lists from taxpayers in lieu of obtaining the tax list from the county records, although county valuations must be used. Inasmuch as the penalties for late listing are covered by State law, a town ordinance purporting to

create different penalties would be invalid in such respect. Furthermore, under the provisions of G. S. 105-307, failure to list taxes for ad valorem property purposes is made a misdemeanor.

MOTOR VEHICLES; SHERIFFS; ARREST OUTSIDE OF COUNTY

29 October 1953

A sheriff has no authority to pursue one guilty of a misdemeanor, such as speeding or driving drunk, into another county and there arrest him.

APPOINTMENT OF DEPUTY SHERIFFS; RESIDENCE REQUIREMENTS

30 October 1953

A deputy sheriff is a public officer and is required to be a resident of the county in which he proposes to serve in such capacity.

JUSTICES OF THE PEACE; TAXATION, COLLECTION AGENCIES

30 October 1953

There is no legal objection to a justice of the peace engaging in the business of operating a collection agency which is done separate and apart from his office as a justice of the peace.

INSURANCE; CLERK OF THE SUPERIOR COURT; DISTRIBUTION OF PROCEEDS OF INSURANCE WHEN BENEFICIARY PREDECEASES INSURED

2 November 1953

When a married woman is beneficiary in a policy of insurance on the life of her husband and the wife predeceases her husband, leaving children surviving, in the absence of contrary contractual provision in the policy, the benefits are payable to the children of the deceased wife under the provisions of G. S. 58-205.

AD VALOREM TAXATION; PERSONAL PROPERTY; MEMBER OF THE ARMED FORCES

2 November 1953

The mere fact that a person is present in a place pursuant to military orders does not make such place that person's residence for ad valorem tax purposes.

AD VALOREM TAXATION; PERSONAL PROPERTY; ICE CREAM CABINETS; TAX SITUS

2 November 1953

Under the provisions of Subsection (4) of G. S. 105-302, an ice cream cabinet placed in a grocery store or market by a dairy farm would be subject to ad valorem taxation by the governmental unit in which such cabinet is located.

MUNICIPALITIES; RIGHT TO PERMIT THE USE OF MUNICIPAL GARAGE FOR
HOUSING COMMUNITY BUS AND RURAL FIRE DEPARTMENT
EQUIPMENT

2 November 1953

A municipality has the right to permit rural fire department to use the municipal garage for housing its fire equipment, without charging any monetary consideration therefor. It is recommended that the contract for storage make some provision for use in the municipality of such equipment in case of emergency.

MUNICIPALITIES; AUTHORITY TO ISSUE NOTES OR BONDS FOR CONSTRUCTION
OF BUILDING TO HOUSE TOWN'S FIRE TRUCK OR TRUCKS WITHOUT
AN ELECTION

2 November 1953

A municipality cannot issue bonds for a building to house the fire department except by compliance with the Municipal Finance Act and the Local Government Act.

NOTARY PUBLIC; NOTARIZING MAPS FOR LAND SURVEYOR BY WIFE AS
NOTARY PUBLIC

2 November 1953

There is nothing in the law dealing with notaries public in this State which prohibits the wife of a land surveyor from acting as a notary public and notarizing the surveyor's signature and maps.

HOSPITALS; NECESSARY EXPENSES; VOTE OF THE PEOPLE FOR
APPROVAL OF BOND ISSUE

2 November 1953

The accumulation of funds by the sale of bonds for the building of a public health center should be approved by a vote of the people, as provided by Article 13(b) of Chapter 131 of the General Statutes.

INTOXICATING LIQUOR; ELECTION; NUMBER OF VOTERS SIGNING PETITION

2 November 1953

Persons signing a petition to call an election under the ABC Act must be registered voters, and the 15% required by the statute must be 15% of the total number of votes cast for Governor in the preceding election, but the petitioners signing the petition do not have to be persons who actually voted in the Governor's election.

AD VALOREM TAXATION; EXEMPTIONS; CHURCH; OUTSTANDING LIFE ESTATE;
LIABILITY OF LIFE TENANT

3 November 1953

The statute provides that a life tenant shall be liable for taxes on property in which he has a life estate, and the fact that the remainderman

is a religious organization and the fact that the life tenant rents such property to such remainderman does not make such property exempt from ad valorem taxation.

JUSTICES OF THE PEACE; JURISDICTION; CLAIM AND DELIVERY;
WORTHLESS CHECKS

3 November 1953

Since the wrongful detention of personal property is a tort, a justice of the peace has jurisdiction in claim and delivery proceedings only in those cases in which the value of the property detained does not exceed \$50.00. A Justice of the Peace has jurisdiction in contract actions up to \$200.00. Therefore, in an action for money judgment for debt secured by a chattel mortgage, and for the recovery of property embraced in the mortgage, a Justice of the Peace has jurisdiction on the contract action up to \$200.00 and for the recovery of the property only when the value of the property does not exceed \$50.00. North Carolina Constitution, Article IV, Section 27, G. S. 7-122. KISER v. BLANTON, 123 N. C. 400, MARTIN v. McNEELY, 101 N. C. 634, GRIFFITH v. RICHMOND, 126 N. C. 377, NOVELLE v. DEW, 94 N. C. 43, HARGROVE v. HARRIS, 116 N. C. 418.

In Alamance County a Justice of the Peace has jurisdiction of the offense of passing a worthless check when the amount of the check does not exceed \$50.00. G. S. 14-107. The passing of a worthless check gives rise to a civil action for the debt and also a criminal action for the violation of the statute (G. S. 14-107). G. S. 1-8. The civil action is discharged by payment, but it is thought that a justice of the peace should not allow the criminal action to be dismissed except upon a finding of fact that the ends of justice do not require a prosecution; otherwise the parties concerned might be guilty of compounding a crime. STATE v. HODGE, 142 N. C. 665.

MOTOR VEHICLES; DRIVER'S LICENSE; ELIGIBILITY FOR LICENSE

4 November 1953

An operator's license may not be issued to any person while his right to operate a motor vehicle in another state is in a state of revocation or suspension in such state, as the result of an action taken by that state while such person was a resident thereof.

HOSPITALS; BOARD OF TRUSTEES OR MANAGERS; DOUBLE OFFICE HOLDING

4 November 1953

A member of a board of managers appointed by resolution of the board of county commissioners under G. S. 131-126.21 to construct and operate a hospital is a commissioner for a special purpose, and likewise a commissioner for a public charity, and is not a public officer within the constitutional provisions prohibiting double office holding.

CRIMINAL LAW; CARRYING CONCEALED WEAPONS IN GLOVE
COMPARTMENT OF AUTOMOBILE

4 November 1953

Whether or not a weapon in a given case is concealed from the public is a question for the jury to decide. Although the statute says that the weapon must be concealed "about his person," this does not necessarily mean that it must be concealed on his person. If the weapon is within reach and control of the defendant, it is a sufficient state of facts to constitute an offense under the statute.

FRANCHISE TAX; DISCLOSURE OF INFORMATION

4 November 1953

Information contained in any franchise tax report may not be disclosed to a person not representing the corporation making such report. Whether action taken by the Department against such corporation pursuant to an investigation of its liability for franchise tax may be disclosed will depend upon the nature of the action taken.

AD VALOREM TAXATION; PERSONAL PROPERTY; RESIDENCE;
MEMBER OF ARMED FORCES

5 November 1953

If a person is a legal resident of a certain town on January 1st of the tax year, such person's personal property is subject to town ad valorem property tax unless such property falls within some special statutory exception.

MUNICIPALITIES; ZONING; WHAT CONSTITUTES CORNER WITHIN THE
MEANING OF G. S. 160-173

5 November 1953

G. S. 160-173 is inapplicable to a street intersection at which there are not more than two corners. This section contemplates a crossing of two streets and does not apply where one street terminates upon entrance into intersecting street.

When a street is dedicated, extending a street across another street which included an area previously zoned for industrial purposes, G. S. 160-173 may then be applicable, if the area within the dedicated street had previously been zoned for industrial purposes.

MUNICIPAL CORPORATIONS; SALARY OF MAYOR

5 November 1953

The salary of the Mayor of the Town of Mount Holly may be increased or decreased during his term of office by action of the Board of Aldermen of said Town.

SCHOOLS; ATTENDANCE; CERTIFICATE OF CHIROPRACTOR

5 November 1953

G. S. 115-302 places the responsibility for excusing pupils from school attendance upon the local school authorities. In the absence of some different statutory provision or some regulation of the State Board of Education, it is thought that local school authorities may obtain their information as to physical or mental disability of a child either from a Doctor's certificate or from some other reliable source.

MUNICIPALITIES; MAYOR'S COURT; RIGHT OF MAYOR PRO TEM TO HOLD COURT

5 November 1953

The mayor pro tem of a city, under G. S. 160-12 and G. S. 160-274, cannot conduct a mayor's court except in the absence or sickness of the mayor, and then only in case the holding of such court would admit of no delay.

REGISTER OF DEEDS; RECORDING FEES FOR DEEDS AND DEEDS OF TRUST

6 November 1953

Under the provisions of G. S. 161-10, the minimum fee for recording a deed or deed of trust is 80c. For each copy-sheet—more than three—an additional fee of 10c is charged. The term "copy-sheet" is defined in G. S. 147-38 as consisting of 100 words. Chapter 843, Session Laws of 1949, sets a different fee for this service in Harnett and Hoke Counties.

ELECTIONS; MUNICIPAL CORPORATIONS; EXTENDING CITY LIMITS

6 November 1953

When an election is held in the area proposed to be annexed to a municipality on the question of whether such area shall be so annexed, a person who has resided in the area proposed to be annexed less than four months prior to the election may not vote in that area in such election.

AD VALOREM TAXATION; PERSONAL PROPERTY; SITUS

9 November 1953

When a truck owner lives in one county and uses his trucks primarily in connection with a business located and operated in another county, such trucks are subject to personal property ad valorem taxation in the county where the business is located even though the truck drivers may take the trucks to their homes in the owner's county each night.

SCHOOLS; TITLE TO ACTIVITY BUSES; REGISTRATION; TORT LIABILITY OF
LOCAL SCHOOL AUTHORITIES; LIABILITY INSURANCE

9 November 1953

G. S. 115-45.1 enacted as Chapter 967, Session Laws of 1953, and which became effectual on July 1, 1953, authorizes county boards of education to take title to school activity buses purchased with local or community funds and to take liability insurance, waiving governmental immunity to the extent of the insurance purchased. It is thought that local schools in the county system and their school committeemen are not legal entities and may not take title to school property. If title to an activity bus is taken in the name of the committee, there is uncertainty as to whether the members thereof are personally liable for damage to person or property. BETTS v. JONES, 203 N. C. 590 and SMITH v. HEFNER, 235 N. C. 1.

Under G. S. 20-84 a county board of education is entitled to permanent registration of the title to activity buses.

LICENSE TAXES; COLLECTING AGENCIES; MERE SOLICITATION OF ACCOUNTS
FOR COLLECTION; SECTION 113

9 November 1953

The mere solicitation of collection accounts from merchants does not make a person subject to the State license tax on collecting agencies when such person does not in any manner engage in the actual collection of the accounts so solicited.

DOUBLE OFFICE HOLDING; MEMBER OF LOCAL MILK BOARD AND MAYOR

10 November 1953

Membership on a local milk board would be considered a public office within the meaning of Article XIV, Section 7, of the Constitution, which prohibits double office holding, and one person may not be a member of such board and at the same time hold the office of mayor of a municipality.

BONDS; SHERIFF; PUBLIC OFFICER; TYPE AND KIND OF BONDS TO BE
FURNISHED BY SHERIFF OF COUNTY

10 November 1953

The sheriff is required to make two bonds; one for the performance of the duties of office and collection of fees, and the other for the collection of taxes. It is believed that this bond is for the complete term of office.

COUNTY COMMISSIONERS; PLUMBING INSPECTIONS UNDER G. S. 160-122.1

10 November 1953

Sanitary Districts created under Article 6, Chapter 130 of the General Statutes have only the corporate powers specifically set out in G. S. 130-39.

Chapter 984, Session Laws of 1953, now codified as G. S. 160-122.1 applicable to Buncombe, Forsyth and three other counties provides that the county commissioners may appoint plumbing inspectors "in unincorporated areas" of the counties to which the Act is applicable. It is thought that an area included within a sanitary district is not an "incorporated area" within the contemplation of the statute. 37 American Jurisprudence (Municipal Corporations), Section 3, page 618. Section 4, 37 American Jurisprudence, page 620.

GAMBLING LAWS; LOTTERY, TURKEY SHOTS

10 November 1953

Participation in a turkey shoot where the winner of the turkey is determined by the skill of the participant is not considered violative of the gambling laws of this State.

SALES TAXES; NORTH CAROLINA SALES TO OUT-OF-STATE MERCHANTS WITH DELIVERY IN NORTH CAROLINA

13 November 1953

A North Carolina wholesaler sells goods to a nonresident retailer who comes to the wholesaler's place of business in North Carolina, purchases the goods, and takes delivery, subsequently transporting the goods to his home state for resale. The North Carolina wholesaler is required to remit retail sales tax on these sales completed in North Carolina, under the ruling of *PHILLIPS v. SHAW*, 238 N. C. 518.

LOTTERY LAWS; PUNCHBOARDS

13 November 1953

It is unlawful to possess, operate or sell punchboards in this State.

ADOPTION; ACCELERATION OF FINAL ORDER; GRANDMOTHER OF ILLEGITIMATE CHILD; KINSHIP THROUGH FATHER OF ILLEGITIMATE CHILD

16 November 1953

Where the clerk of the superior court finds that a petitioner is the grandmother by blood of illegitimate children, her son being the father, a final order of adoption may be entered under G. S. 48-21(c) without the entry of an interlocutory decree and without waiting for the probation period.

AD VALOREM TAXES; PERSONAL PROPERTY; CONDITIONAL SALE CONTRACT; WHO MUST LIST

16 November 1953

Under G. S. 105-304, a vendee of personal property under a conditional bill of sale is considered the owner of the property for ad valorem tax

listing purposes providing the vendee has possession of such property or the right to use the same.

MOTOR VEHICLES; DRIVERS' LICENSES; PERIOD OF SUSPENSION;
TWO OFFENSES OF SPEEDING OVER 55

16 November 1953

When an operator has been convicted of speeding 70 miles per hour and two months later is convicted of speeding 75 miles per hour, the Department must suspend his license for a period of 30 days and in its discretion may suspend for a period of not less than 60 days nor more than 6 months. When an operator within a period of one month is twice convicted of speeding 65 miles per hour, the Department is not required to suspend his license but has the authority to do so for a period of not less than 60 days nor more than 6 months. Should the latter operator be convicted a third time of speeding 65 miles per hour, no suspension would follow, but upon a fourth similar conviction the Department would have the authority to suspend under G. S. 20-16 (9).

PUBLIC HEALTH; PUBLIC WELFARE; LIABILITY OF COUNTY HEALTH OFFICER
AND SUPERINTENDENT OF PUBLIC WELFARE BECAUSE OF
INJURY OR DAMAGE DONE BY EPILEPTIC
COMMITTED TO COUNTY HOME

16 November 1953

Where a county health officer notifies the board of county commissioners that a person proposed to be admitted to the county home is an epileptic or suffering from some disease which may result in endangering the safety of the other inmates of the county home, he has performed his duty and would not be liable for damages or injuries caused by the admission of such person to the county home.

The superintendent of public welfare of the county is charged with the care of and looking after persons discharged from mental institutions of the State, but he can only exercise such duties and care with the facilities provided by the governing authorities of the county; if advised by the county health officer that the admission of a person to the county home would be dangerous, and he so notifies the commissioners, he would not be personally responsible for any injuries or damages done by such person if admitted to the county home.

MUNICIPALITIES; ORDINANCE FIXING CLOSING HOURS FOR FILLING STATIONS
IN A DESIGNATED PORTION OF THE CITY

16 November 1953

A municipality has a right to regulate the opening and closing hours of all businesses within the municipality, which are reasonable, but such regulation must be uniform in its application to all businesses similarly situated within the municipality. An ordinance closing filling stations in

one residential district of a municipality would be invalid unless applied also to all other like residential districts in the town.

STATUTORY CONSTRUCTION; SPECIAL AND GENERAL ACTS; PRACTICE OF
PALMISTRY IN MECKLENBURG COUNTY

16 November 1953

A general Act of the Legislature does not repeal a special Act of the Legislature unless the two are in irreconcilable conflict.

PAYMENT OF TURNKEY FEES AND OTHER COSTS BY TOWNS OF TRYON
AND SALUDA TO POLK COUNTY; VALIDITY OF CHAPTER 362, SESSION
LAWS OF 1947; FAILURE OF CAPTION OF ACT TO REFER TO
REPEAL OF GENERAL LAW

16 November 1953

A local and private act repealing a general law is not invalid by reason of failure to refer to the general law repealed in the caption. *STATE v. NORMAN*, 237 N. C. 205. Local Act could not be treated as unconstitutional by municipality and county officials unless declared unconstitutional by a court of competent jurisdiction.

QUERY: Would a local act be unconstitutional because it did not treat all municipalities in a county alike as to payment of jail fees in certain cases?

MUNICIPALITIES; RIGHT OF MUNICIPALITY TO PLEDGE FUTURE REVENUE
FROM POWELL BILL FUNDS FOR STREET PAVING

16 November 1953

A municipality cannot pledge future revenues under the Powell Bill for street paving, but must comply with the Municipal Fiscal Control and Municipal Finance Acts in the issuance of any bonds or notes.

COUNTIES AND COUNTY COMMISSIONERS; SALE OF REAL PROPERTY;
PRIOR SALES

16 November 1953

A county is not required to sell real property at public sale, but may sell at private sale.

PUBLIC CONTRACTS; LETTING WORK IN SEPARATE CONTRACTS FOR PLUMBING,
HEATING AND ELECTRICAL WORK; MATERIALS; SUPPLIES AND
SUPERVISION AT PUBLIC BIDDING; G. S. 143-129

16 November 1953

Public contracts for a building shall be let separately for heating, ventilating, plumbing and gas fitting, electrical installation, and air condition-

ing, as required by G. S. 143-128, and, subject to the limitations therein, public contract for materials and supervision in the general contract may also be let at public bidding, separately, as required by G. S. 143-129.

- (1) MUNICIPAL TAXATION; FUEL OIL TRUCKS; DELIVERING OIL WITHIN MUNICIPALITY
- (2) MUNICIPAL TAXATION; TRUCKS DELIVERING FUEL OIL; NO RIGHT TO IMPOSE LICENSE TAX OF MORE THAN \$1.00 PER TRUCK
- (3) MOTOR VEHICLES; MUNICIPAL REGULATIONS; MUNICIPAL LICENSE TAX LIMITED TO \$1.00 PER VEHICLE

17 November 1953

The right of a city to levy a license tax under that portion of Section 153 which relates to the sale of "motor fuels and/or lubricants" is limited to "each place of business located therein." The right of a city to levy a license tax under Section 137 is limited to a city "in which there is located an agency, station or warehouse for the distribution or sale of such commodities." A city may not levy a "per truck tax for using our streets" beyond that of \$1.00 per vehicle per year as set forth in G. S. 20-97.

AD VALOREM TAXES; PARTNERSHIP PROPERTY; LIEN OF PARTNERSHIP
PROPERTY TAXES ON REAL PROPERTY OWNED BY INDIVIDUAL PARTNERS

17 November 1953

A lien of ad valorem taxes levied on partnership real estate would also attach to real property owned by each individual partner.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT; DIVORCE; SERVICE OF PROCESS;
APPOINTMENT OF ATTORNEY

17 November 1953

The Soldiers' and Sailors' Civil Relief Act appears to require that process be served in accordance with the laws of the jurisdiction within which any action is instituted although it is doubtful that service by publication in any event would be upheld. This Act contemplates the appointment of an attorney for an absent serviceman, but failure to do so may only render any action voidable and not void. Any attorney so appointed must assert all available defense.

MUNICIPAL CORPORATIONS; FRANCHISES FOR PUBLIC UTILITIES;
WATER SUPPLY

17 November 1953

A municipal corporation can grant a reasonable franchise to a water company not exceeding a period of 30 years. Such a franchise must be reasonable and cannot be exclusive.

ARCHIVES AND HISTORY; PRESERVATION OF RECORDS

17 November 1953

G. S. 121-6 authorizes any State, county, town, or other public official to turn over to the Department of Archives and History public records which are no longer in current official use. Under this section, if it is determined by the Department of Archives and History that such records do not have further use or value for official or administrative purposes and when the Department finds that such records have no further use or value for official research, the Department may then authorize the governing body having custody of the same to destroy them.

MUNICIPALITIES; INVESTMENT OF PROCEEDS OF A BOND ISSUE

18 November 1953

G. S. 159-49.1 provides that if for any reason the whole or any part of the proceeds of the sale of bonds issued by a city cannot be applied to the purpose for which such bonds were authorized, such proceeds may be invested in either bonds, notes or certificates of indebtedness of the United States or in bonds or notes of any agency of the United States, the payment of principal and interest of which is guaranteed by the United States, or in bonds or notes of the State of North Carolina or in bonds of any county, city or town of North Carolina, which have been approved by the Local Government Commission of North Carolina for the purpose of such investment.

AD VALOREM TAXES; DEED OF PROPERTY TO GOVERNMENTAL UNIT FOR
TAXES IN LIEU OF FORECLOSURE; RIGHT TO RECONVEY

18 November 1953

Under the peculiar set of facts of this case, a city and county would be authorized to reconvey certain real property at private sale to the original owner for a price of not less than the accrued outstanding taxes thereon.

MOTOR VEHICLES; DRIVERS' LICENSES; NON-RESIDENTS; DUTY TO
PROCURE DRIVER'S LICENSE

19 November 1953

A South Carolina resident who intends to remain a resident of South Carolina and is located in this State only for a short period of time as supervisor of a work project is required to obtain a motor vehicle license tag if he remains in this State for more than thirty days but is not required to obtain a North Carolina operator's license.

MUNICIPAL CORPORATIONS; CHARTER PROVISION REGULATING CONTRACTS;
CONFLICT OF SPECIAL ACT WITH GENERAL ACT

19 November 1953

Where a City Charter contains a provision limiting and regulating the authority to enter into contracts according to the amount of money to be

spent, which is more stringent than the general Act on such subject, the provision or special Act in the City Charter is valid and must be followed.

A Charter provision requiring that the city Manager must be authorized by the Board of Aldermen to make any contract or purchase is not complied with with a general appropriation ordinance which does not set out any specific amount for any particular purchase.

CIVIL PROCEDURE; CONTENT OF TRANSCRIPT OF JUDGMENT

19 November 1953

A transcript of a judgment is simply a copy of an original writing. Black's Law Dictionary defines a "transcript" as "an official copy of certain proceedings in court." Ballentine's Law Dictionary defines "transcript" as "A copy of a writing." Bouvier's Law Dictionary defines "transcript" as "a copy of an original writing or deed." Words and Phrases, 42, page 403, states "a transcript is what the name implies, a copy."

In *WILSON v. PATTON*, 87 N. C. 318 and *LEE v. BISHOP*, 89 N. C. 256, our Supreme Court held that "a transcript is sufficient if it sets out the date of the rendition of the judgment, the names of the parties, the amount of the judgment and the costs of the action." However, it is thought that a certified copy of the entire judgment should be accepted by the Clerk of another county and recorded as a transcript under G. S. 1-234.

WATER; RIGHTS OF RIPARIAN OWNERS TO DIMINISH THE FLOW OF NON-NAVIGABLE STREAMS

20 November 1953

The common law rule in this State is that a riparian owner of lands bordering a non-navigable stream may use the water from the stream for any purpose he thinks proper, just so long as he does not materially diminish the flow of the stream and does not interfere with the similar rights of other proprietors above, below or opposite him on the same stream. *STATE v. GLEN*, 52 N. C. 321 and *PERNELL v. CITY OF HENDERSON*, 220 N. C. 79.

NEGOTIABLE INSTRUMENTS; DRUNKENNESS AS A DEFENSE; MOTOR VEHICLES; STATE HIGHWAY PATROL

20 November 1953

The statute requires that a member of the state highway patrol must wear his uniform when on duty, but it does not state that an arrest by him when not in uniform is invalid.

LOTTERIES; CONFISCATION OF AUTOMOBILE USED IN CONDUCTING LOTTERIES

20 November 1953

The question as to whether an automobile may be confiscated and sold where it has been used in the transportation and delivery of lottery tickets was raised in *STATE v. RICHARDSON*, 228 N. C. 426, but the

Court failed to decide it squarely, and my search has revealed no other case in which it was passed upon. For this reason, no authoritative answer can be given, but it would seem that the statute does authorize confiscation.

AD VALOREM TAXATION; PERSONAL PROPERTY; EXEMPTIONS; PERSONAL
PROPERTY ON INDIAN RESERVATION OWNED BY NON-INDIAN

23 November 1953

State statutes do not exempt from ad valorem taxation personal property owned by non-Indians and located on real property owned by Indians, and such property would be subject to taxation unless the Federal government has exclusive jurisdiction over such real property.

MOTOR FUEL TAX; CONDITIONAL SALE AGREEMENT; PRIORITY

24 November 1953

A duly recorded conditional sale agreement on an automobile will take priority over a subsequently levied warrant for motor fuel and inspection taxes due the State.

COUNTIES AND COUNTY COMMISSIONERS; AUTHORITY OF COUNTY TO CONFER
DUTIES OF COUNTY ACCOUNTANT ON THE REGISTER OF DEEDS

24 November 1953

Under the provisions of G. S. 153-115, the board of county commissioners may confer the powers and duties of county accountant upon the register of deeds in those counties where there is no county auditor.

MOTOR VEHICLES; RECKLESS DRIVING; PENALTY

24 November 1953

The maximum sentence upon a conviction for reckless driving is a fine of \$100 and imprisonment for 60 days.

MOTOR VEHICLES; TRANSFER OF TITLE

24 November 1953

When an automobile registered with the Motor Vehicle Department in the name of A, as owner, is seized under execution issued on a judgment against B, the purchaser at the execution sale will succeed to such title as B had. Before the Department of Motor Vehicles can issue a certificate of title to such purchaser, the original certificate of title being unavailable, the Department should receive satisfactory proof that the judgment debtor was in fact the owner of the vehicle. The judgment debtor's affidavit, being a self-serving declaration, would not be conclusive evidence of this fact.

MOTOR VEHICLES; MEETING VEHICLES; FUNERAL PROCESSION

25 November 1953

There is no provision in the North Carolina Motor Vehicle Law requiring the driver of a vehicle to stop when meeting a funeral procession.

MOTOR VEHICLES; FOR HIRE LICENSE; TRANSPORTING CHILDREN TO SCHOOL

25 November 1953

One who uses a station wagon for the transportation, pursuant to contract, of children from their homes to their schools, and return, the compensation being a fixed sum per month, is operating a motor vehicle for hire even though from day to day he transports the same passengers.

MARRIAGE LAWS; COMMON-LAW MARRIAGE

27 November 1953

Common-law marriages are not recognized in this State.

REVENUE ACT; REFUNDS; INTEREST

30 November 1953

When a refund is made for overpayment of tax, interest must be paid on the refund from the end of 90 days after the taxpayer pays the tax to the date on which the refund is paid. No interest may be paid on such refund by the Department for the 90-day waiting period regardless of whether the overpayment of the tax was due to an error by the taxpayer or an error by the Department.

INHERITANCE TAXES; CLERK OF COURT; FEES; CRAVEN COUNTY

1 December 1953

A local act requiring fees paid to the Clerk of the Superior Court of Craven County to be paid into the general fund of the County is not repealed by a subsequent amendment to the state-wide Inheritance Tax Article of the Revenue Act, containing no repealer clause but fixing fees to be paid to Clerks of the Superior Court for duties imposed upon them by the Inheritance Tax Article and providing that such fees shall be paid to the Clerks in addition to other fees or salaries received.

SALES TAX; SALES TO RETAILERS IN OTHER STATES

1 December 1953

When a North Carolina wholesaler sells to a retailer whose place of business is in another state, the 3% sales tax applies if delivery is made

to the buyer in North Carolina, but does not apply if delivery is made to the buyer in another state or is made to a common carrier in North Carolina for delivery to the buyer in the other state.

**SALES AND USE TAX; AUTOMOBILE DEALERS; FREE ACCESSORIES AS SALES
INDUCEMENT; APPLICABILITY OF USE TAX**

2 December 1953

In furnishing a free automobile accessory as an inducement to an automobile sale an automobile dealer would be using such accessory within the meaning of the use tax statute and accordingly would be subject to the use tax at the rate of 3% of the purchase price of such accessory paid by the automobile dealer.

USURY LAWS; OUT-OF-STATE LENDERS; LOANS MADE BY MAIL

2 December 1953

This State would recognize the validity of a contract made by mail in accordance with the laws of another State if it was entered into in good faith and not for the purpose of evading the usury laws of this State, if the lender transacts his business entirely by mail and the company has no agency or office in North Carolina and carries on no local function in this State except the solicitation by mail.

ELECTIONS; VOTING PRECINCTS; CORRESPONDENCE WITH TOWNSHIP LINES

2 December 1953

There must be at least one voting precinct in each township. G. S. 163-22. Having voting precincts to cross township lines would create complications in the nomination and election of township officers of constable and justice of the peace. Therefore, it is desirable to have voting precincts within township lines.

**MUNICIPAL CORPORATIONS; BOND ISSUE FOR WATER AND SEWERAGE SYSTEM;
PAYMENT FOR INSTALLING METERS**

2 December 1953

Where municipal bonds are sold for the purpose of obtaining funds to install a water system and sewerage system use of these bond funds to purchase meters and meter boxes is a legal and legitimate use of such money, since meters and meter boxes are an essential and integral part of a municipal water system.

**GENERAL ADMINISTRATION; CERTIFICATE OF TAX LIABILITY; TEN-YEAR
STATUTE OF LIMITATION**

2 December 1953

A Certificate of Tax Liability docketed by the Commissioner of Revenue becomes unenforceable ten years from the date of its docketing, and the tax represented thereby is automatically abated.

FEDERAL TAXATION; POWER OF FEDERAL SERVICE TO LEVY ON SALARIES DUE
STATE EMPLOYEES

2 December 1953

Internal Revenue Service does not have the authority to levy on salaries and wages owed by State agencies and departments to State employees.

SALES AND USE TAX; EXEMPTIONS; MILL MACHINERY

3 December 1953

G. S. 105-169 provides that for sales tax purposes "sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants may be classified as wholesale sales, and, therefore, only subject to the wholesale rate of tax."

On the other hand, a sale of mill machinery to an independent contractor who uses or consumes such machinery or machinery parts and accessories in the course of performing contracts with a manufacturing industry or plant ordinarily would not be subject to such exemption, or wholesale rate, but would be subject to the 3% retail rate.

COUNTIES; PROHIBITING OF SHOWING OF CARNIVALS

3 December 1953

The statute authorizing the granting of permits for showing of carnivals, etc., is Chapter 854, Session Laws of 1953, G. S. 106-516.1. Limitations on right of carnivals to show are also provided by G. S. 105-39.

SCHOOLS; AUTHORITY OF A CITY AND A COUNTY ADMINISTRATIVE UNIT TO
CONSTRUCT AND OPERATE A SCHOOL JOINTLY

3 December 1953

While the 1953 amendment to G. S. 115-88 would seem to authorize a city administrative unit to contribute to the construction and maintenance of a school facility located outside the city unit and within the county unit, under contract by which students of both units attend the school without tuition charge, it is doubtful that such a school could be operated by the city administrative unit. It is thought that such a school would necessarily be a part of the county system because physically located within the county system.

INCOME TAX; GROSS INCOME; DECEASED CORPORATE OFFICER;
PAYMENT TO WIDOW

7 December 1953

When a corporation pays the widow of a deceased officer a sum of money in consideration for past services of its deceased officer, the Department

of Revenue should follow the Federal rule which is that, "beginning in 1951, payments to the widow of a deceased officer or employee, whether voluntary or involuntary, definite or indefinite, in consideration of services rendered by the officer or employee, are includible in the widow's gross income" for State income tax purposes.

INCOME TAX; EXEMPTIONS; DEPENDENTS; DEPENDENT OVER EIGHTEEN AND
ENROLLED IN SCHOOL ON DECEMBER 31ST

7 December 1953

A child may not be claimed as a dependent for income tax purposes when such child is not physically or mentally incapacitated and is not under eighteen years of age on December 31st of the tax year and is not regularly enrolled for full time study in an educational institution at such time.

LICENSE TAX; COTTON STORAGE WAREHOUSE; MUNICIPAL LICENSE TAX

7 December 1953

A municipal corporation is authorized to levy a license tax upon the operator of a cotton storage warehouse. There is no provision in the general Revenue Act or the law of the State which restricts this power.

(1) AD VALOREM TAXATION; SPECIAL TAX COLLECTORS; POWER TO APPOINT;
HENDERSON COUNTY

(2) COUNTIES AND COUNTY COMMISSIONERS; SPECIAL TAX COLLECTORS;
AUTHORITY TO APPOINT; HENDERSON COUNTY

7 December 1953

I know of no general authority which would permit the Board of County Commissioners to provide for special tax collectors over and above that authorized by the special Act. It is my understanding that this situation is usually covered in the different counties by special acts. The fact that your special acts have gone into detail as to the circumstances under which additional tax collectors may be employed, and the compensation to be provided, would seem to negative any general authority to appoint other tax collectors.

MUNICIPALITIES; INVESTMENT OF PROCEEDS OF BONDS PENDING USE OF
SAME; G. S. 159-49.1

7 December 1953

Both counties and municipal corporations can invest unused proceeds of bonds pending use of same in Federal and State securities approved by the Local Government Commission, as authorized by G. S. 159-49.1.

EXECUTORS AND ADMINISTRATORS; DISTRIBUTION OF RECOVERY IN ACTION
FOR WRONGFUL DEATH

8 December 1953

An action for wrongful death was brought within the time allowed by law. A nonsuit was taken and a second action instituted within the time

allowed by G. S. 1-25. A recovery was had in the new action. From the statements of the Supreme Court in the case of *BAKER v. RAILROAD*, 91 N. C. 308, and *BROADNAX v. BROADNAX*, 160 N. C. 432, it is thought that the costs in the original action constitute a proper expense of collection.

GAME LAWS; JURISDICTION OF A JUSTICE OF THE PEACE; MIGRATORY FOWL

8 December 1953

G. S. 113-100 provides that the open season for hunting ducks and other migratory water fowl shall be according to Federal regulations. The present Federal regulations fix the open season from November 11th to January 9th and further provide that such fowl may not be hunted after sunset.

G. S. 113-109 (1953 cumulative supplement) fixes the penalty for a violation of any of the provisions of Article 7, Chapter 113, of the General Statutes or for the violation of any regulation of the Wildlife Resources Commission at a maximum fine of \$50 or imprisonment for thirty days. Therefore, a justice of the peace has original jurisdiction of such an offense. However, the same section fixes the maximum penalty for a second offense at a fine of \$200 or imprisonment for six months or both in the discretion of the court. Therefore, a justice of the peace has only binding jurisdiction for a second offense.

INHERITANCE TAXES; CLASSES OF BENEFICIARIES; ADOPTED CHILDREN; INFORMAL ADOPTION

9 December 1953

An informal adoption does not qualify the children as class A beneficiaries under Section 3 of the Revenue Act.

CRIMINAL LAW; PUBLIC DRUNKENNESS; HIGHWAY No. 87 OF FORT BRAGG AREA

9 December 1953

The provisions of Section 14-335 of the General Statutes, which state that if any person shall be found drunk or intoxicated on the public highway, etc. he shall be guilty of a misdemeanor, is applicable to Cumberland County. Persons found in automobiles drunk on Highway No. 87 in our opinion are guilty of a violation of this section.

MUNICIPAL RECORDERS' COURTS; APPOINTMENT OF DEPUTY CLERKS

9 December 1953

There is no provision in the law for the appointment of a deputy clerk of a municipal recorder's court.

MOTOR VEHICLES; OVERLOADING; PENALTIES; COLLECTION PROCEDURE

9 December 1953

Motor vehicle overloading penalties are collectible by suit but are not collectible by the summary procedure set forth in G. S. 20-99 for the collection of taxes.

POLL TAX; DISABLED VETERANS; EXEMPTIONS

9 December 1953

Disabled veterans of World War I and the Korean Conflict are exempt from the poll tax. The General Assembly apparently never extended this exemption to disabled veterans of World War II. However, Subsection 1 of G. S. 153-9 authorizes the board of county commissioners "to exempt from capitation tax in special cases, on account of poverty and infirmity."

NORTH CAROLINA FAIR TRADE ACT; ARTICLE 10, CHAPTER 66, OF THE GENERAL STATUTES; GIVING OF TRADING STAMPS IN CONNECTION WITH SALES OF FAIR TRADE MERCHANDISE

10 December 1953

North Carolina Fair Trade Practice Act prohibits the offering or making of any concession of any kind whatsoever, whether by giving of coupons or otherwise, in connection with the sale of fair trade commodities. This would prevent the giving of trading stamps in connection with the sale of fair traded articles.

MUNICIPALITIES; DEPOSITS FOR WATER AND ELECTRIC SERVICES;
INTEREST ON SUCH DEPOSITS

10 December 1953

A municipality has a right to require of customers of its water and light department that they make a reasonable deposit to protect the city against water and light bills to be incurred by the customer. The city is not required to pay interest on such deposits but may do so if they so agree with the customer.

G. S. 14-361, CRUELTY TO ANIMALS STATUTE; JUSTICES OF THE PEACE;
JURISDICTION

10 December 1953

A violation of G. S. 14-361 is within the jurisdiction of a justice of the peace for the reason that in a case where a person is convicted of this statute he may be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty (30) days.

DEPUTY SHERIFF; DAMAGE TO AUTOMOBILE; LINE OF DUTY;
PAYMENT OF BY COUNTY

10 December 1953

The Board of County Commissioners, paying deputy sheriffs for their travel expenses on a fixed amount per month, may, in their discretion, allow compensation to a deputy sheriff for unexpected damage done to his car by a prisoner while resisting arrest.

MUNICIPALITIES; PARKING CHARGES COLLECTED WITHOUT INDICTMENTS;
EFFECT OF CHAPTER 879, SESSION LAWS OF 1953,
LIMITING PENALTY TO \$1.00

10 December 1953

A person convicted or entering a plea of guilty of violating municipal ordinances as to parking may be fined without regard to the limitation placed by Chapter 879 of \$1.00 penalty, unless the conviction is secured by reliance upon the presumption created by the 1953 Act.

MUNICIPALITIES; LEASING OR RENTING OF EXCLUSIVE RIGHT TO USE
WHARVES AT STREET ENDS OF MUNICIPALITY

11 December 1953

A municipality may not lease out public property devoted to public use for exclusive use without special authority from the General Assembly, and may not lease the street ends on navigable waters for the exclusive use of a person or corporation, unless authorized by special Act or direct authority of the General Assembly.

MUNICIPAL TAXATION; LICENSE TAXES; STATUTE OF LIMITATIONS;
CITY LICENSE TAXES

11 December 1953

There is no general statute of limitations with respect to the collection of city license taxes.

UNITED STATES TREASURY BONDS; TRANSFERS; SURVIVORSHIPS

11 December 1953

Transfers of U. S. Treasury Bonds are determined by Treasury regulations which prohibit a transfer by simple delivery of the bonds. Treasury regulations allow joint ownership of bonds with a right of survivorship.

SCHOOLS; CRIMINAL PROCEDURE; COLLECTION OF FINES AND FORFEITURES;
REMITTANCES BY CLERK OF THE SUPERIOR COURT

11 December 1953

G. S. 2-42 (subsections 7 and 22) and G. S. 1-305 place a responsibility upon the Clerk of the Superior Court for the collection of fines and forfeitures. G. S. 115-382 places the responsibility in that regard upon the county superintendent of schools.

It is thought that a satisfactory way to handle the matter of remittances is for the Clerk to transmit fines and forfeitures to the County Treasurer by check with a letter of transmittal, attaching an itemized statement.

SCHOOLS; CRIMINAL PROCEDURE; FORFEITURE OF BAIL BONDS; COUNTY
BOARD OF EDUCATION; COLLECTION OF FINES AND FORFEITURES;
COMPROMISE SETTLEMENT OF JUDGMENTS

11 December 1953

Under the language of G. S. 115-116, it is thought that the court in which the judgment was rendered has authority to lessen or remit forfeited bail bonds upon petition of the surety either before or after final judgment. However, the County Board of Education has no authority to settle or cancel for less than face value such judgments made absolute. STATE v. MOODY, 74 N. C. 73; STATE v. MORGAN, 136 N. C. 593; STATE v. CLARKE, 222 N. C. 744; STATE v. WIGGINS, 228, N. C. 76.

ELECTRICIANS; AUTHORITY OF OWNER TO INSTALL ELECTRICAL WIRING IN
HIS OWN HOME

11 December 1953

A person may install electrical wiring in his own home without first having received a license from the North Carolina Board of Electrical Contractors.

AD VALOREM TAXES; PERSONAL PROPERTY; PLACE OF LISTING;
RESIDENCE OF STATE EMPLOYEES

12 December 1953

A State employee who chooses to retain his home county as his place of residence is not required to list his personal property for ad valorem taxes in Wake County unless the same is used in Wake County for business purposes.

COUNTY HOSPITALS; NECESSARY EXPENSES; EQUIPPING AND MAINTAINING

14 December 1953

A county cannot levy a special tax for the purpose of building, equipping and maintaining a public health center, without submitting the matter to a vote of the people. G. S. 131-126.23.

MUNICIPAL ORDINANCES; POLICE POWERS; LICENSING BICYCLES

14 December 1953

Under its general police powers, a city is authorized to adopt ordinances requiring the registration of bicycles and the issuance of identifying markers for which a small administrative expense fee of 25c or 50c is charged.

COUNTY COMMISSIONERS; COURTS; JURY LIST; TIME FOR REVISION

14 December 1953

While certain provisions of G. S. 9-1 are directory and not mandatory—STATE v. SMARR, 121 N. C. 669; STATE v. PERRY, 122 N. C. 1018; STATE v. BONNER, 149 N. C. 519 and STATE v. BROWN, 233 N. C. 202, because of a statement contained in STATE v. SPELLER, 229 N. C. 67, it is thought that county commissioners may not revise the jury list and take out the names of all persons thought to be of bad character, those who have been convicted of crimes involving moral turpitude and those who have been adjudged non compos mentis, after the regular time for making up the jury list. Instead, it is thought that the commissioners must wait until the next regular time for making up a new jury list. In the meantime, disqualified persons drawn for jury service will be subject to challenge for cause. STATE v. LEVY, 187 N. C. 581.

PRAYER FOR JUDGMENT CONTINUED; CHANGE OF CONDITIONS

14 December 1953

When a prayer for judgment is continued for a stated period of time upon stated conditions by a county criminal court and the court is called upon to reconsider the case for expiration of such time for breach of conditions, the court may continue prayer for judgment again upon more stringent conditions, and a defendant who does not wish to abide the conditions may demand immediate sentencing, as in Superior Court.

MUNICIPALITIES; INVESTMENT OF PAVING ASSESSMENTS COLLECTED PENDING MATURITY OF PAVING BONDS

16 December 1953

Surplus funds derived from collection of paving assessments by a municipality, which cannot be used for the purchase or payment of paving bonds, may be invested in securities authorized by the local Government Act, including shares of stock in a building and loan association, when authorized by the Commissioner of Insurance.

INCOME TAX; OUT-OF-STATE INCOME; RESIDENT INDIVIDUAL

16 December 1953

A resident of North Carolina who receives compensation for personal services rendered in another state, upon which he is required by such

other state to pay an income tax, must report his entire income to North Carolina for income tax purposes. In computing his income tax liability to North Carolina, he deducts his salary earned in the other state on which he paid income tax to that state and also deducts other proper items such as contributions and taxes paid. He then subtracts such proportion of the normal personal exemption as his salary in such other state bears to his entire income.

MOTOR VEHICLES; MUNICIPAL CORPORATIONS; RESTRICTED STREETS

16 December 1953

An alley is part of the system of streets in a municipality. The municipal authorities may properly adopt ordinances restricting the use of an alley to vehicles of a given size provided that such restriction is reasonable in view of the particular circumstances.

MUNICIPAL CORPORATIONS; ORDINANCES AGAINST DISPLAYING MERCHANDISE ON SIDEWALKS

16 December 1953

In the case of *STATE v. SUMMERFIELD*, 107 N. C. 895, our Supreme Court upheld a municipal ordinance which prohibited the display of merchandise on sidewalks.

TAXATION; VALUATION OF REAL AND PERSONAL PROPERTY

17 December 1953

Under the Consitution and Machinery Act, all intangible personal property subject to taxation is required to be assessed at its true value in money, and all such property must be valued upon the same basis, and the tax assessors cannot discriminate between different types of property in the determination of values.

SPEED LIMITS ON UNPAVED ROADS IN RESIDENTIAL SECTIONS OF CITIES; POWER OF MUNICIPALITIES TO REDUCE SPEED LIMITS ON SUCH ROADS

17 December 1953

The speed limit on a clay road in a residential section of a town is 35 miles per hour unless that limit has been reduced by ordinance in accordance with the terms of G. S. 20-141 (f).

SALES AND USE TAX; 3-D MOVIE SOUND SYSTEMS; SINGLE ARTICLE

18 December 1953

A "complete sound system" installed in a theater is not regarded as a single article for sales tax purposes. Rather, the component parts of the sound system are treated as separate articles.

BEER; MUNICIPALITIES; AUTHORITY OF CITY TO RESTRICT BY ORDINANCE THE
SALE OF BEER WITHIN THE CONFINES OF THE BUILDING FOR WHICH
THE LICENSE IS ISSUED

18 December 1953

Since municipal corporations have only the powers granted to them either expressly or impliedly by the General Assembly (G. S. 160-1) and since by Articles 4, 7, 11 and 12, Chapter 18, of the General Statutes the General Assembly has placed the general regulation and control of the sale of beer in the State Board of Alcoholic Control, it is thought that a municipality may not legally pass ordinances in conflict with the State-wide statutes or legislate upon a phase of the subject covered by a State-wide statute. Therefore, because of the above, it is thought that a municipality has the authority to pass a valid ordinance prohibiting "on premises" operators from making sales of beer on the curb or in a parking lot operated as a separate business, but not in a parking space off the street and used solely for the convenience of customers of operator's place of business. It is also thought that a municipality does have the authority to pass a valid ordinance prohibiting those operating under "off premises" licenses from making delivery to persons in automobiles parked in public streets and it is also thought that a municipality has the authority under its police power to pass a valid ordinance prohibiting the drinking of beer in the public streets.

BEER; MUNICIPALITIES; AUTHORITY OF MUNICIPALITY TO PASS ORDINANCE
PROHIBITING SALE OF BEER IN COUNTY WHICH ALLOWS SUCH SALE

18 December 1953

There seems to be no statute applicable to Carteret County allowing a municipality within the county by ordinance to prohibit the legal sale of beer within the municipality when such sales are allowed in the county as a whole. G. S. 18-120; G. S. 18-127.

PRACTICE OF LAW; TAX RETURNS

21 December 1953

It is not practicing law to set down on an income tax blank figures supplied by the taxpayer or taken from the taxpayer's books, nor is it practice of the law to make the appropriate computations in arriving at the taxpayer's income tax liability from these figures. Advising the taxpayer concerning the propriety of including certain items in gross income or the propriety of deductions may be engaging in the practice of the law.

SCHOOLS; TEACHERS; SUPERVISORS; DISMISSAL

21 December 1953

The duties of the county supervisor are to be outlined by the county superintendent. The supervisor is to assist in the supervision of instruction

which would include giving advice to teachers concerning the portions of the reading textbook which the class should read at a given point in the school year. There is nothing in the statute to prevent a principal from dismissing a teacher. If the teacher does not comply with such request, the teacher may be dismissed in accordance with the provisions of Section 115-143.

INTANGIBLES TAX; MONEY ON DEPOSIT; TRUSTEE IN BANKRUPTCY

21 December 1953

The deposit of a trustee in bankruptcy in a North Carolina bank is not subject to the intangibles tax. For the intangibles tax due on the account of the bank balance which the bankrupt had before his adjudication, the State has a claim against the bankrupt estate.

ILLEGAL PRACTICE OF LAW; NOTARIES PUBLIC

21 December 1953

A notary public who is not a licensed attorney at law may not prepare mortgages, deeds, deeds of trust, or other legal documents. See Chapter 84 of the General Statutes.

JURORS; EXEMPTION FROM JURY DUTY; RAILROAD EMPLOYEES

21 December 1953

Under the provisions of G. S. 9-19, all persons who are in the regular employ of railroad companies are exempt from jury duty in this State. Under this section, the clerk of the superior court is authorized to excuse from jury duty any person or persons who are exempt under the section.

MUNICIPAL CORPORATIONS; PARLIAMENTARY LAW; MEETINGS OF CITY COUNCIL

22 December 1953

The mayor of a municipality who can by law only vote in case of a tie may not cast his vote to create a tie where there is only one member of a three-member board who votes on a motion.

AD VALOREM TAXATION; LATE LISTING; PENALTIES; COMPUTATION

28 December 1953

Under the general law, the maximum penalty for late listing for ad valorem tax purposes is 10% of the tax which such late lister would owe or \$1.00, whichever amount is the greater.

COMMITMENT OF MENTALLY DISORDERED; INSANITY; RESTORATION OF SANITY

28 December 1953

Commitment to a hospital for mental observation and treatment is not equivalent to an adjudication of insanity and, therefore, upon final release from such hospital, a person is presumed sane.

MOTOR VEHICLES; RULES OF THE ROAD; PRIVATE ROADS; LAKE JUNALUSKA
ASSEMBLY GROUNDS

29 December 1953

The rules of the road section of Motor Vehicle Laws does not apply to the roads and streets in the Lake Junaluska Assembly Grounds.

ACCOUNTANTS; LICENSE FEES REQUIRED; STATUS OF ACCOUNTANTS UNDER
NORTH CAROLINA LAW

29 December 1953

Accountants are required to pay an annual license tax under G. S. 105-41 and no other license fees or taxes are imposed on them by the State or by any county, city or town. An accountant, under the North Carolina statute, is entitled to engage in the business of accounting, as defined by the statute. G. S. 93-1(1).

CRIMINAL PROCEDURE; SEARCH WARRANTS FOR OBSCENE LITERATURE

30 December 1953

A search warrant may not be legally issued for the search and seizure of illegal and obscene literature and pictures. This is true for the reason that these items are not included in the items listed under G. S. 15-25 or G. S. 18-13.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT OF 1953; STATUS OF
MUNICIPAL POLICE AND FIRE DEPARTMENT EMPLOYEES

31 December 1953

Municipal policemen and firemen operating municipally-owned motor vehicles in the line of duty are subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act of 1953.

MOTOR VEHICLES; 1953 FINANCIAL RESPONSIBILITY ACT; APPLICABILITY TO
HIGHWAY EMPLOYEES

31 December 1953

State Highway employees operating State-owned motor vehicles are subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act of 1953.

PYROTECHNICS; SPARKLERS

31 December 1953

Sparklers are considered pyrotechnics within the meaning of the law in this State prohibiting the sale, exhibition or possession of fireworks.

CLERK SUPERIOR COURT; AUTHORITY OF DEPUTY CLERK TO ISSUE A
PERMIT TO PURCHASE A WEAPON

31 December 1953

The issuance of a permit to purchase a weapon under G. S. 14-403 is considered a judicial act prescribed for the clerk of the court and must be performed by the clerk or an assistant clerk. It may not be performed by a deputy clerk.

MUNICIPAL TAXATION; LICENSE TAXES; RETROACTIVE ORDINANCE

4 January 1954

A town ordinance which purports to levy a municipal license tax retroactively is invalid.

ELECTIONS; ABSENTEE VOTING; ABSENCE REGISTRATION; VETERANS VOTING
IN SPECIAL LIQUOR ELECTION

4 January 1954

Article 11A of Chapter 163 of the General Statutes, providing for absentee registration and voting of members of the armed forces, is not available for and does not apply to a special liquor election held under the ABC Acts.

ALCOHOLIC BEVERAGE CONTROL BOARD; SALARY OF CHAIRMAN

4 January 1954

A county ABC board is not authorized to pay a bonus to the widow of the chairman.

SCHOOLS; CAPITAL OUTLAY BONDS; APPORTIONMENT BETWEEN CITY AND
COUNTY UNITS

5 January 1954

The language of that part of G. S. 115-363 dealing with the apportionment of county-wide debt service funds between county and city administrative units is very confusing. Still it is thought that the legislative intent was to say that there shall be no apportionment in those cases in which special legislation has been enacted providing for the issuance of

school building bonds in behalf of school districts or special bond tax units, such as Chapter 279, Public Local Laws of 1937 and Chapters 1162 and 1163, Session Laws of 1953, applicable to Buncombe and Stanly Counties.

UNITED STATES LANDS; SHERIFFS; CRIMINAL PROCEDURE; SERVICE OF CIVIL
AND CRIMINAL PROCESS

5 January 1954

G. S. 104-7 gives to the United States the consent of the State of North Carolina to acquire certain lands within the State for purposes of government. This statute cedes to the United States jurisdiction over such lands so acquired "for all purposes except the service upon such sites of all civil and criminal processes of the courts of this State."

Under the foregoing it is thought that the sheriff and his deputies have authority to serve civil and criminal process on military bases located within this State. However, it may be that there are Federal regulations to be complied with as to notice of intent and procedure. It is suggested that a North Carolina officer always communicate first with the commanding officer of the base.

SCHOOLS; AUTHORITY OF A COUNTY ADMINISTRATIVE UNIT TO CONSTRUCT A
SCHOOL BUILDING LOCATED WITHIN A CITY ADMINISTRATIVE UNIT

5 January 1954

Under G. S. 115-88 as amended by Chapter 695, Session Laws of 1953, it is thought that a county administrative unit has authority to construct and contribute to the maintenance of a school facility located within the limits of a county administrative unit within the same county, but such school would be a city school under the control and management of the board of trustees of the city administrative unit. It is doubted that in such case the county board of education would have the authority to acquire title to a site for such a building under the provisions of G. S. 115-85. However, if it should do so, the conveyance would not be void. *CROSS v. R. R.*, 172 N. C. 119.

G. S. 115-352 specifically provides that the State Board of Education may in its discretion alter the boundaries of a city administrative unit when such change is desirable for better school administration.

ALIMONY; SUBMISSION OF ISSUES TO A JURY; CUSTODY OF CHILDREN

5 January 1954

In proceedings for alimony without divorce the essential issues arising on the pleadings should be submitted to a jury, and where an allowance is made to a wife and child, with custody of the child being awarded to the wife and the defendant husband later brings an action for absolute divorce upon the grounds of two years' separation, the custody question may be again determined in the absolute divorce action, but no reduction may be made in the allowance given to the wife.

AD VALOREM TAXATION; MEMBER OF ARMED FORCES; NORTH CAROLINA
RESIDENT

5 January 1954

When a North Carolina resident becomes a member of the armed forces and is assigned to duty in this State, he continues to be liable for personal property taxes in his home county unless he takes positive steps to change his legal residence.

AD VALOREM TAXES; EXEMPTIONS; PERSONAL PROPERTY TAXES BECOMING
DUE WHILE A PRISONER OF WAR

5 January 1954

I know of no State or Federal statutes which would cancel property taxes accruing while the owner was a prisoner of war.

MUNICIPALITIES; ABANDONMENT OF DEDICATED STREETS

6 January 1954

The dedication of a street may not be withdrawn by the grantor or those claiming under him if the dedication has been accepted and *the street or any portion thereof has been opened and is in use by the public*. A municipality has the right to determine where its streets and alleys shall be and may not be forced to maintain a street or alley by dedication. LEE v. WALKER, 234 N. C. 687; RUSSELL v. COGGIN, 232 N. C. 674.

In the instant case, lots were sold according to a recorded plat showing a certain street. A part of the street was accepted by the city and was paved, the remaining portion never having been opened up or used. It is doubtful that the City has any right without a special act of the Legislature to execute a quitclaim deed releasing its rights to accept the dedication at a later date. Sufficient facts are not furnished to determine the applicability of the provisions of G. S. 136-96.

MUNICIPAL CORPORATIONS; OPERATION OF MUNICIPAL JAILS; AUTHORITY OF
THE CITY OF RALEIGH TO PROVIDE COMPENSATION TO WAKE COUNTY
FOR CARE OF MUNICIPAL PRISONERS IN COUNTY JAIL

6 January 1954

Considering the public-local statutes authorizing the City of Raleigh to charge in the bill of costs in the City Court fees for the maintenance of prisoners in the City Jail and considering, also, the public-local statute which enacts the charter of the City of Raleigh, as well as the general statutes governing municipalities and counties: The City of Raleigh is authorized to pay Wake County a periodically fixed sum for the care and maintenance of City prisoners in the County Jail of Wake County; this periodic fixed sum to be adjusted from time to time and to be controlled by the amount of costs collected by the City in cases in the City

Court and elsewhere which require the payment to the City of costs of fees for the maintenance of the jail and the keep of the City prisoners.

REGISTER OF DEEDS; ISSUANCE OF MARRIAGE LICENSES;
REASONABLE INQUIRY

6 January 1954

A register of deeds is required to make a reasonable inquiry as to the ages of parties applying for marriage licenses so as to determine whether either or both of the parties are under 18 years of age. The acceptance of an age stated on a driver's license, where the parties are from a foreign state and are unknown to the register of deeds, is not reasonable inquiry, unless the age in appearance of the parties puts them above 18 years of age beyond all question according to the experience of normal people.

AD VALOREM TAXATION; REAL PROPERTY; REVALUATION; NON-QUADRENNIAL
YEARS; REMOVAL OF HOUSE TO VACANT LOT

7 January 1954

When a house is removed from a lot, such lot is revalued for ad valorem tax purposes even though it is not in a year of general real property revaluation. Likewise, the lot to which the house is removed is subject to revaluation even though the year involved is not a regular revaluation year.

AD VALOREM TAXES; DELINQUENT TAXES; CREDIT FOR DOG
VACCINATION FEES

7 January 1954

Dog vaccination fees paid prior to 1953 may be credited against delinquent taxes accruing prior to 1953 because the 1953 statute is prospective only.

AD VALOREM TAXES; PERSONAL PROPERTY; PLACE OF LISTING;
RESIDENCE OF STATE EMPLOYEES

7 January 1954

Personal property of a State employee who has moved to Wake County is not subject to Wake County ad valorem taxation if such employee chooses to retain his former residence as his legal residence.

AD VALOREM TAXATION; EXEMPTIONS; CHURCH PROPERTY; PARSONAGE

7 January 1954

The operation of a barber shop by a parson or the operation of a beauty shop by the parson's wife in a parsonage would cause such parsonage to lose its ad valorem tax exempt status.

GARNISHMENT; STATE TAXES; STATE EMPLOYEES

7 January 1954

A state tax garnishment procedure is not necessary in the case of ordinary, regular State employees because the State has authority to deduct such taxes from the wages of employees who fail to pay their State taxes.

COUNTY RECORDERS' COURTS; MUNICIPAL RECORDERS' COURTS;
TERRITORIAL JURISDICTION

7 January 1954

Statutory provision that a county recorder's court should have exclusive original jurisdiction of all general misdemeanors committed in the county, and statutory provision that a municipal recorder's court in the county should likewise have original exclusive jurisdiction of such misdemeanors committed within the municipality, cannot be reconciled, and the two courts will be held to possess concurrent jurisdiction of such misdemeanors committed within the municipality.

MUNICIPAL CORPORATIONS; OFF-STREET PARKING; AUTHORITY TO LEASE
PROPERTY AND MAKE PARKING CHARGES

8 January 1954

Municipal corporations are authorized by statute to acquire and operate off-street parking facilities, and they may make charge for same by the hour, day, week or month. They are not authorized to pass ordinances to regulate off-street parking, a violation of which would be an offense against the criminal law.

PUBLIC SCHOOLS; MUSIC PROGRAMS PREPARED BY MUSIC TEACHERS AND
GIVEN IN VARIOUS CHURCHES ON SUNDAY

8 January 1954

Music programs, given by invitation, of public school students in churches on Sundays, on a voluntary basis, are not a violation of any law, since no credits are given for such programs and they are not given during school hours.

MOTOR VEHICLES; DRIVERS' LICENSES; OPERATION OF FARM TRACTOR
WHILE LICENSE REVOKED

11 January 1954

One whose license has been revoked is not violating the law by temporarily operating or moving a farm tractor on the highway.

SALES TAX; BUILDING MATERIALS; SHRINE TEMPLE

11 January 1954

A sale of building materials to a contractor for use in the construction of a Shrine Temple's building is subject to the sales tax, the Shrine being a fraternal organization rather than a charitable organization.

INHERITANCE TAXES; DEDUCTIONS; DEVISE IN PAYMENT OF SUPPORT
DURING LIFE

12 January 1954

A stepmother devises property to her stepson in payment of the support which the stepson furnished the deceased during her lifetime. If the claim of the stepson for payment of which the devise is made rested on such contract or agreement as to make the claim legally enforceable, the estate would be entitled to a deduction for the payment.

MOTOR VEHICLES; RULES OF THE ROAD; APPLICABILITY TO PRIVATE
PARKING AREAS

12 January 1954

The rules of the road sections of the motor vehicle laws do not apply to operation on privately owned parking areas adjacent to business establishments. A town could by ordinance regulate operation in such areas. Operators driving recklessly in these areas might be violating other provisions of the criminal laws, such as the assault statutes.

EXECUTORS AND ADMINISTRATORS; DISTRIBUTION OF AMOUNT RECOVERED FOR
WRONGFUL DEATH; HUSBAND AND WIFE; PRIMARY RESPONSIBILITY
OF HUSBAND FOR WIFE'S FUNERAL EXPENSES

13 January 1954

Even though G. S. 28-173 provides that funeral expenses of the deceased may be paid from the recovery in an action for wrongful death, it is thought that in the absence of a will providing otherwise, this statute does not have the effect of relieving the husband of his primary responsibility to pay his wife's burial expenses. BROWN, EXECUTOR, v. BROWN, 199 N. C. 473; BOWEN v. DAUGHERTY, 168 N. C. 242; BATTS v. BATTS, 198 N. C. 395 and DAVENPORT v. PATRICK, 227 N. C. 686.

PUBLIC CONTRACTS; APPLICABILITY OF G. S. 143-129 TO TYPE OF CONTRACT
DESCRIBED

13 January 1954

The provisions of G. S. 143-129 would apply to a contract let by a municipality to a contractor for making general repairs and reconditioning

of its municipally owned electric lines, where the expenditures involved are equal to or in excess of those provided by G. S. 143-129, although the actual amount of the contract would be determined by the amount of work finally completed and materials furnished therefor.

INCOME TAX; MISCELLANEOUS; REFUND

14 January 1954

The income of a nonresident which has not been earned in North Carolina is not subject to North Carolina income tax.

SALES TAX; EXEMPTIONS; BOOKS OTHER THAN BIBLES OR SCHOOL BOOKS NOT EXEMPT

14 January 1954

The only books which are automatically exempt from the State sales tax are "public school books on the adopted list and the selling price of which is fixed by State Contract and Holy Bibles."

SALES AND USE TAX; EXEMPTIONS; AUTOMOBILES BROUGHT INTO STATE; NOT ORIGINALLY PURCHASED FOR USE IN STATE

14 January 1954

When an automobile owner brings an automobile into this State for use in this State, the automobile is not subject to the North Carolina use tax if the automobile was not purchased originally for use in this State.

AD VALOREM TAXES—RAILROADS—REVALUATION—ANNUAL OR QUADRENNIAL

14 January 1954

Ordinarily railroad property is revalued quadrennially rather than annually for ad valorem tax purposes.

ACCIDENT AND HEALTH INSURANCE; AUTHORITY OF MUNICIPALITY TO PAY PREMIUMS ON HEALTH AND ACCIDENT POLICIES ON EMPLOYEES AND DEPENDENTS

15 January 1954

A municipal corporation may pay the entire premium on a policy of health and accident insurance taken out on its employees and their dependents.

MUNICIPAL CORPORATIONS; EMPLOYEES OF MUNICIPALITY EMPLOYED ON HOLIDAYS AND AFTER WORKING HOURS BY PRIVATE EMPLOYERS

15 January 1954

There is no law which would prohibit a municipal employee accepting other work during holidays and hours which he is not required to work for the municipality.

**MOTOR VEHICLES; TITLE AND REGISTRATIONS; PERMANENT REGISTRATIONS;
VEHICLES OWNED BY RELIGIOUS ORGANIZATIONS**

18 January 1954

Vehicles owned and used by the Lake Junaluska Assembly, Incorporated, for purposes other than transporting people to and from church are not entitled to permanent registration.

**COUNTY COMMISSIONERS; SCHOOLS; AUTHORITY TO CONVEY TO COUNTY
BOARD OF EDUCATION A PART OF COUNTY HOME PROPERTY**

18 January 1954

Under G. S. 115-83, G. S. 115-85 and Article 9, Section 3 of the State Constitution, the primary responsibility for furnishing school facilities is upon the county commissioners. *ATKINS v. McADEN*, 229 N. C. 752.

Because of the foregoing primary responsibility, it is thought that the board of county commissioners has the right to convey to the County Board of Education a few acres of the county home farm for the site of a building to store and repair school buses provided such land is not actually needed for county home and farm purposes. *BROWN v. CANDLER*, 236 N. C. 576.

DOG TAX; LISTING; AGE OF DOG IMMATERIAL

19 January 1954

Every dog must be listed for taxation irrespective of age or sex.

**AD VALOREM TAXATION; REAL PROPERTY; EXEMPTION; HOSPITAL PROPERTY
USED BY UNITED ARTS ORGANIZATION**

20 January 1954

Real property which is owned by a hospital and which the hospital permits a charitable, cultural organization to use is not exempt from ad valorem taxation.

**MOTOR VEHICLES; SAFETY AND FINANCIAL RESPONSIBILITY ACT OF 1953;
EMPLOYEES OF SELF-INSURERS**

20 January 1954

The operator of a motor vehicle owned by a self-insurer is not excepted from the operation of the Motor Vehicle Safety and Financial Responsibility Act of 1953.

- (1) SALES TAX; EXEMPTIONS; COFFEE SOLD THROUGH VENDING MACHINE
- (2) LICENSE TAX; VENDING MACHINES; COFFEE VENDING MACHINES

21 January 1954

No sales tax is imposed with respect to the sale of cups of coffee by means of a vending machine unless such machine is located in a place where prepared meals are sold or served.

COUNTIES; AUDITING COUNTY WELFARE DEPARTMENT; DAILY DEPOSIT LAW;
APPLICABILITY TO WELFARE FUNDS

21 January 1954

The board of commissioners has a right to require the county welfare department to make a daily deposit of funds under the daily deposit law and, through the accountant, can audit monthly or oftener as required the public welfare funds and accounts.

INTOXICATING LIQUORS; CONFISCATION OF VEHICLES AND APPARATUS;
SALE IN CLUBS

21 January 1954

G. S. 18-6 provides for the seizure and confiscation of vehicles when any officer shall discover any person engaged in the act of transporting in such vehicle intoxicating liquors in violation of law. Since criminal statutes are strictly construed in favor of the defendant, it is considered doubtful that our courts would authorize the seizure and confiscation in the vehicle used in transportation of the materials designed and intended for use in the manufacture of illegal liquor but not being used in the actual transportation of intoxicating liquors.

G. S. 18-22 provides for the seizure and confiscation of any distillery or apparatus used for the manufacture of intoxicating liquor in violation of law. It is thought that the term "apparatus" is broad enough to include all sorts of equipment to be used in the illegal manufacture of liquor but not to include the ingredients such as sugar, etc.

Since G. S. 18-15 is a part of the Turlington Act, it is thought that this section makes it illegal to sell hard liquors in a club and that in a county which has voted against the legal sale of beer and wine under the provisions of Article 11, Chapter 18 of the General Statutes it is also illegal to sell beer and wine in clubs. *STATE v. BARNHARDT*, 230 N. C. 223 and *STATE v. WELCH*, 232 N. C. 77.

MOTOR VEHICLES; DRIVER'S LICENSES; EXEMPTIONS; FARM JEEP

21 January 1954

A jeep used on the highway for the purpose of traveling from one farm to another is not an "implement of husbandry" within the meaning of G. S. 20-8(b).

INTANGIBLES TAX; MONEY ON DEPOSIT; COLLECTION BY BANK

22 January 1954

The State intangibles tax on money on deposit with a bank is levied at the rate of 10c on every \$100.00.

CRIMINAL PROCEDURE; SERVICE OF PEACE WARRANTS BY CITY POLICEMEN

25 January 1954

A city policeman may serve a peace warrant within the corporate limits of the city which he serves if the warrant is directed to the sheriff or other lawful officer. The better practice would be to have the warrant directed to the sheriff or to any lawful officer or to any policeman of a named municipality.

COUNTY COMMISSIONERS; TORT LIABILITY; LIABILITY INSURANCE

25 January 1954

A board of county commissioners is not authorized to purchase liability insurance on boilers in the courthouse or other county buildings.

MUNICIPALITIES; POWELL BILL FUNDS; CONSTRUCTION OF HIGHWAYS IN
MUNICIPALITIES BY THE STATE HIGHWAY AND PUBLIC WORKS COMMISSION

25 January 1954

Under the Powell Bill, municipalities and the State Highway and Public Works Commission can, in their discretion, enter into contracts to maintain, repair, construct, reconstruct, widen, and improve city streets and expend any funds a municipality may have available for this purpose. As amended in 1953, the Powell Bill makes it mandatory for the State Highway and Public Works Commission to make contracts with municipalities of 5,000 population or less for doing such work with funds provided therefor under the Powell Bill.

STATE BOARD OF ARCHITECTURAL EXAMINATION AND REGISTRATION;
AUTHORITY OF MUNICIPALITY TO REQUIRE IDENTITY OF
AUTHOR OF PLANS SUBMITTED TO MUNICIPAL
AUTHORITIES

25 January 1954

Under Chapter 83 of the General Statutes, regulating the practice of architecture, both registered architects and all persons who are the author of plans and specifications are required to sign the same in order to show the authorship of such plans. Building inspectors and other proper officers of municipalities may require plans filed with them for building permits to be signed by the author of such plans.

EXECUTORS AND ADMINISTRATORS; ESTATES; WIDOW'S YEAR'S ALLOWANCE;
AMOUNT WHEN ESTATE IS SOLVENT

26 January 1954

Construing together G. S. 30-15; G. S. 30-18; G. S. 30-26; G. S. 30-29 and G. S. 30-31, it is thought that when a decedent's personal estate exceeds \$2000 and the value of his entire estate, real and personal, exceeds

his debts and the cost of administration, but his personal estate alone is of less value than the amount of his debts and the costs of administration, the Clerk of the Superior Court is not limited to \$750.00 in fixing the amount of the widow's year's allowance. *GLASCOCK v. GRAY*, 148 N. C. 346; *HARPER v. HARPER*, 148 N. C. 453; and *POWELL v. WOOD*, 149 N. C. 235; *MANN v. MANN*, 173 N. C. 20; *DREWRY v. BANK*, 173 N. C. 664 and *DENTON v. TYSON*, 118 N. C. 542.

**MOTOR VEHICLES; DRIVER'S LICENSE; DRIVING WHILE INTOXICATED;
PLEA OF NOLO CONTENDERE**

26 January 1954

Where the operator of a motor vehicle has entered a plea of nolo contendere upon the charge of driving such vehicle while under the influence of intoxicating liquors, the Department may, upon receipt of the report of such case from the Clerk of the Court, revoke the operator's license in accordance with G. S. 20-17.

**MOTOR VEHICLE; MOTOR VEHICLE SAFETY AND FINANCIAL RESPONSIBILITY
ACT OF 1953; PENALTY FOR DRIVING WHILE LICENSE SUSPENDED**

26 January 1954

Operators whose licenses have been suspended under the Motor Vehicle Safety and Financial Responsibility Act are subject to the punishment imposed by G. S. 20-7 (n).

STATE LANDS; PURCHASE; G. S. 143-146

26 January 1954

State lands, other than marsh and swamp lands, may be purchased by following the procedure set forth in G. S. 143-146. However, lands which are not in the charge of any particular State agency or official probably cannot be purchased under this section.

EDUCATION; BOARD OF EDUCATION; LIABILITY FOR SOCIAL SECURITY TAX

26 January 1954

The Board of Education of a county is not an employer as defined by the Old Age and Survivors Insurance Act of the Federal Government, nor is it within the taxing provisions which are limited to this Act, and services performed for such Board of Education are not covered services within the definitions given in such Acts. A County Board of Education, therefore, is not liable for such Social Security taxes.

GUARDIANS; INVESTMENT OF FUNDS; CLERK'S APPROVAL OF ACCOUNT

26 January 1954

A clerk of Superior Court should not refuse to approve a guardian's account solely because the guardian invested in diversified common stocks.

A clerk approving an account containing such investment would not expose himself to any loss if he is reasonably satisfied that the investment has been made in good faith and after the exercise of due diligence on the part of the guardian or trustee.

MUNICIPAL CORPORATIONS; WATER RATES; AUTHORITY TO CHARGE HIGHER RATES FOR NONRESIDENTS THAN FOR RESIDENTS

26 January 1954

Where the parties to a contract calling for continuing performance fix no time for its duration and none can be implied from the nature of the contract or from the surrounding circumstances, the contract is terminable at will by either party on reasonable notice to the other. *FULGHUM v. SELMA*, 238 N. C. 100.

A municipal corporation has authority to increase the rates charged for water for consumption outside its corporate limits and to charge more to nonresidents than to residents for water services.

ELECTIONS; RECORDER'S COURT; EXTENSION OF JURISDICTION

27 January 1954

Article II, Section 29 of the North Carolina Constitution does not forbid the passage of a local or special act enlarging the jurisdiction of a previously established court. Unless such act provides otherwise, the right to vote in an election of the officers of such court will be determined by the statute creating the court.

AD VALOREM TAXATION; GARNISHMENT; GARNISHMENT AUTHORIZED BY STATUTE

27 January 1954

A special statute authorizes a city or county to garnish wages in order to collect ad valorem property taxes.

AD VALOREM TAXES; REVALUATION; NO SPECIAL LIMITATION ON AMOUNT OF REVALUATION

28 January 1954

There is no general law restricting the percentage of increase of valuation of real property for ad valorem tax purposes when a revaluation is had.

MOTOR VEHICLES; PENALTIES; PUNISHMENT FOR SPEEDING

28 January 1954

Speeding is punishable by a fine not to exceed \$100.00 or imprisonment not to exceed sixty (60) days or both.

SUBVERSIVE ACTIVITIES; COMMUNIST PARTY; LOYALTY OATH

28 January 1954

Subversive activities are prohibited by North Carolina statutes G. S. 14-11, 14-12 and 14-12.1, and these statutes provide that no person shall be employed by the State of North Carolina or any of its departments, bureaus or agencies who teaches or advocates the overthrow of the government by force and violence.

TUBERCULOSIS HOSPITALS; EMPLOYMENT OF SUPERINTENDENT

29 January 1954

The question as to whether or not the manager of the Mecklenburg County Tuberculosis Hospital could engage in the private practice of medicine in addition to his duties as manager of said Hospital is purely a matter of contract between the doctor employed in such capacity and the Board of Managers of said Hospital.

TELEVISION; FRANCHISE OR LICENSE FROM A MUNICIPALITY

29 January 1954

Radio communication includes television as one form of radio transmission and Title 47, U. S. Code Annotated, Section 153b applies to every phase of television and regulatory scheme set out therein as being exclusive of State action. ALLEN B. DUMONT LABORATORIES v. CARROLL, C. A. Pa. 1950, 184 Federal (2d) 153. Petition for a writ of certiorari was denied by the Supreme Court in 71 *Supreme Court* 490, 340 U. S. 929, 95 L. Ed. 670.

PRIMARY ELECTIONS; PARTY AFFILIATION; CANDIDATES

29 January 1954

Party affiliation cannot be changed except during regular registration period, unless the chairman of the board of elections or the registrar shall find that error has been made in designating party affiliation. This is not applicable to Guilford County, in which changes can be made not less than 20 days before an election. No person can become a candidate for a primary office with a party unless he is registered as affiliated with such party.

MOTOR VEHICLES; MOTOR VEHICLE SAFETY AND FINANCIAL RESPONSIBILITY ACT OF 1953; NON-ADMITTED COMPANY; UNITED SERVICES AUTOMOBILE ASSOCIATION OF SAN ANTONIO, TEXAS

1 February 1954

Insurance policies with the United Services Automobile Association of San Antonio, Texas are not sufficient to comply with the Motor Vehicle

Safety and Financial Responsibility Act of 1953 when held by residents of this State who have their automobiles registered in this State or by nonresidents of this State who have their automobiles registered in North Carolina. Such policies satisfy the Act when held by nonresidents who have their automobiles registered in the state of their residence providing the Insurance Company is admitted in the insured's state of residence and files the necessary papers with the Motor Vehicle's Commissioner.

SCHOOLS; MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT OF 1953;
TORT CLAIMS ACT OF 1951

1 February 1954

It is thought that the resolution recently adopted by the State Board of Education allocating \$100,000 for the purpose of securing the payment of judgments rendered against said board for damages arising out of accidents in the operation by its employees of motor vehicles owned by the State, covers mechanics in school garages as well as bus drivers.

MUNICIPALITIES; LOCAL IMPROVEMENTS; WORK DONE BY FORCES OF
MUNICIPALITY OR BY CONTRACT

2 February 1954

It may well be that our courts would hold that G. S. 160-84 applies only to street paving and similar projects and does not apply to the extension or improvement of a town's water or sewer system. The courts might even hold that G. S. 143-129 and G. S. 143-135 have repealed G. S. 160-84. At any rate it does not seem safe for a municipality to fail to comply with G. S. 143-129 and G. S. 143-135 in the expenditure of the proceeds of a bond issue for the extension or improvement of a town's water and sewer system when the project exceeds in cost \$15,000 or unless there is specific statutory authority for the expenditure as is the case in Mount Gilead under the provisions of Chapter 152, Session Laws of 1953. *HAWKINS v. DALLAS*, 229 N. C. 561 and *RAYNOR v. LOUISBURG*, 220 N. C. 348.

ADOPTION OF CHILD IN GERMANY AND BRINGING OF CHILD TO NORTH
CAROLINA TO LIVE

3 February 1954

Child adopted in foreign country in compliance with its adoption laws and later brought to North Carolina to reside. Adoption proceedings should be instituted in North Carolina county of residence accomplished by certified copies of adoption proceeding and amended birth certificate from the country of adoption.

MUNICIPALITIES; ABANDONMENT OF DEDICATED STREETS

3 February 1954

The dedication of a street may not be withdrawn by the grantor or those claiming under him if the dedication has been accepted and the street

or any portion thereof has been opened and is in use by the public. LEE v. WALKER, 234 N. C. 687. G. S. 1-45 provides that no person shall ever acquire any exclusive right to any part of a public street by way of occupancy thereof or by encroaching upon or obstructing the same in any way. GATES COUNTY v. HILL, 158 N. C. 584 and GAULT v. LAKE WACCAMAW, 200 N. C. 593.

PUBLIC WELFARE; OLD AGE ASSISTANCE; LIENS; ESTATE BY THE ENTIRETY;
DEATH OF ONE OF TENANTS AND ATTACHMENT OF LIEN

4 February 1954

Where liens are filed against husband and wife who are tenants by the entirety, and because of old age assistance furnished to each one, upon the death of the husband the wife takes full estate by survivorship, and the estate would then become liable for the assistance furnished her. It would never at any time be liable for assistance furnished the deceased husband.

ELECTION FOR FIRE PROTECTION; SPECIAL TAX; WHEN HELD

4 February 1954

Voting for special tax for fire protection under G. S. 69-25.2 et seq may be held at the same time of the holding of primary or general election, but such procedure is not recommended.

REGISTER OF DEEDS; CANCELLATION OF LEASES AND NOTICES OF
ASSIGNMENTS OF ACCOUNTS RECEIVABLE

4 February 1954

There is no provision of law whereby a register of deeds is authorized to make a marginal entry of satisfaction upon a lease or agreement which is recorded in the office of a register of deeds.

The notice of assignment of account may be cancelled of record at any time by the assignee or by his duly authorized attorney in fact, or upon presentation by the assignor or the assignee of the original notice of assignment marked satisfied in full by the assignee, but such cancellation shall not affect the protection afforded to accounts already assigned under a protected assignment. The cancellation of the original notice of assignment shall operate as a cancellation of all extension statements.

AD VALOREM TAXATION; PERSONAL PROPERTY; AUTOMOBILES; PLACE OF
LISTING AUTOMOBILES KEPT OUTSIDE COUNTY BY SALESMEN

5 February 1954

When a company employs a salesman outside the county where such company is located and places in such salesman's possession an automobile to be used on company business outside the county, and such salesman so uses the automobile and personally arranges for the parking or storage of

the automobile outside the county, such automobile should be listed for taxation in the county where the salesman resides and usually stores such automobile.

AD VALOREM TAXATION; REAL AND PERSONAL PROPERTY; EXEMPTIONS;
UNITED ARTS ORGANIZATION

5 February 1954

Under the facts set forth in this particular case, the personal property of the organization in question would be exempt from ad valorem taxation but the real property would not be exempt.

AD VALOREM TAXATION; EXEMPTIONS; REAL PROPERTY; PATRIOTIC,
HISTORICAL OR CHARITABLE ASSOCIATIONS

5 February 1954

Under the facts set forth in this particular case, the real property of the association involved would not be exempt from ad valorem taxation.

MOTOR VEHICLES; DRIVERS' LICENSES; CONVICTION IN ANOTHER STATE;
FAILURE OF OTHER STATE TO SUSPEND OR REVOKE

5 February 1954

Under G. S. 20-23 the Department of Motor Vehicles is authorized to suspend or revoke the license of any resident of this State upon receiving notice of the conviction of such person in another state of the offense of driving in excess of 75 m. p. m.

BEER AND WINE; QUALIFICATIONS OF SIGNERS OF PETITION FOR BEER
ELECTION

5 February 1954

Under the provisions of G. S. 18-127, it is thought that a petition need not actually be signed by 15% of the registered voters who actually voted in the last municipal primary or general election for town officials. Instead, it is thought that the petition must be signed by registered voters of the municipality equivalent in number to 15% of the number of voters who cast ballots in the last municipal primary or general election, whichever cast the greater number of votes. G. S. 18-124(b) and *WEAVER v. MORGAN*, 232 N. C. 642.

1. BEER AND WINE; CONSUMPTION OF BEER ON LICENSED PREMISES
AFTER MIDNIGHT

2. CRIMINAL PROCEDURE; CONFISCATION OF LOTTERY TICKETS UNDER
G. S. 14-299

5 February 1954

1. Under the provisions of G. S. 18-106 and G. S. 18-141, it is thought that the operator under a retail beer permit may not legally close his place

of business to the general public at 12 o'clock-midnight and allow customers or friends to remain and consume beer on the premises between that time and 7 A.M.

2. Although lotteries and gambling are dealt with by separate statutes, it is thought that money, lottery tickets and other property used in connection with the operation of a lottery are subject to confiscation under the provisions of G. S. 14-299. *STATE v. RICHARDSON*, 228 N. C. 426.

AD VALOREM TAXATION; PERSONAL PROPERTY; PLACE OF LISTING; FARM
EQUIPMENT STORED IN TOWN; FARM EQUIPMENT NOT STORED IN TOWN

8 February 1954

Under the general rule set forth in G. S. 105-302 (Section 800 of the Machinery Act) the property owned by a town resident and regularly stored in town at night would be subject to the general rule that personal property shall be listed at the residence of the owner.

Farm equipment regularly kept outside the town limits would not be subject to town ad valorem property taxation because such property would come within one of the exceptions set forth in Subsection (4) of the section above referred to which provides in part that "tangible personal property shall be listed at the place where such property is situated, rather than at the residence of the owner, if the owner or person having control thereof hires or occupies a store, mill, dockyard, piling ground, place for the sale of property, shop, office, mine, farm, place for storage, manufactory or warehouse therein for use in connection with such property."

AD VALOREM TAXATION; PERSONAL PROPERTY; SAWMILL OWNED BY CITY
RESIDENT BUT KEPT OUT OF TOWN; PLACE OF LISTING

8 February 1954

Although there are certain statutory exceptions, the general rule is that tangible personal property shall be listed for ad valorem taxation at the residence of the owner.

LICENSE TAXES; GRAIN ELEVATOR OPERATOR; GRAIN MERCHANT; SECTION 133

8 February 1954

When a grain elevator company operates a grain elevator in a certain town and makes cash purchases of grain which it in turn sells to processing mills, but the company does not sell grain on commission and does not operate leased wires or ticker service, there is no liability for any State license tax. However, under the provisions of G. S. 160-56, the town in question would be authorized to levy a tax under the general authority granted therein to a city or town to "lay a tax on all trades, professions and franchises carried on or enjoyed within the city."

PUBLIC WELFARE; OLD AGE ASSISTANCE LIEN; HOMESTEAD EXEMPTION;
PRIORITY OF CLAIM AGAINST ESTATE OF RECIPIENT

8 February 1954

- (1) When old age assistance recipient's assistance is terminated for reasons other than death, actions to foreclose statutory lien may be instituted during the lifetime of a recipient and within the ten year limitation provided in G. S. 108-30.1; recipient would be entitled to homestead exemption should execution issue in enforcement of the lien during his lifetime.
- (2) Claim against estate of recipient has equal priority in order of payment with the sixth class under Section 28-105 of the General Statutes (reference G. S. 108-30.2).

INTOXICATING LIQUOR; CONFISCATION OF AUTOMOBILE FOR PAST VIOLATION

9 February 1954

Under the provisions of G. S. 18-6 and G. S. 18-48, it is thought that an automobile may not be confiscated for past acts of illegal transportation of intoxicating liquors but that such vehicle may be confiscated for present acts of illegal transportation. The case in which the driver of the car throws the liquor out of the car while being pursued by arresting officers is considered a present act and not a past act of illegal transportation. *LIZASO v. U. S.*, 65 F. (2d) 685; *COMMERCIAL CREDIT COMPANY v. COMMONWEALTH OF VIRGINIA*, 155 S. E. 698; *EDMUNSON v. COMMONWEALTH*, 126 S. E. 54 (Va) and *STATE v. CHOROSKY*, 119 A. 662 (Maine).

SCHOOLS; TORT LIABILITY OF LOCAL SCHOOL AUTHORITIES;
LIABILITY INSURANCE

10 February 1954

Under ordinary circumstances school officials are not liable for damages sustained by persons who attend performances on school property under the sponsorship of outside agencies. *SMITH v. HEFNER*, 235 N. C. 1. If it be alleged and proved that the act or failure to act was corrupt or malicious, a public official will be liable at tort. *BETTS v. JONES*, 203 N. C. 590. When pupils on school grounds sustain injuries attributable to the negligence of an employee of the public school system while acting within the scope of his employment and without contributory negligence on the part of the injured pupil, the State Board of Education is liable under the Tort Claims Act, Article 31, Chapter 143 of the General Statutes. A local school board can protect itself from liability for injuries to person or property caused by the operation of activities school buses to the extent of liability insurance carried. G. S. 115-45.1.

- (1) WEAPONS; NECESSITY OF PERMIT FOR A PERSON TO KEEP A REVOLVER IN HIS OWN HOME
- (2) CRIMINAL PROCEDURE; NECESSITY OF LEGAL COUNSEL FOR A PERSON TO PLEAD GUILTY OF PUBLIC DRUNKENNESS OR OTHER MINOR OFFENSES

10 February 1954

There is no necessity for a person to secure a permit to keep a revolver in his own home for the protection of himself and his family. The law requires that a person secure a permit from the clerk of the superior court before he is permitted to purchase a revolver.

There is no requirement that a person secure the services of an attorney at law before pleading guilty to public drunkenness or for any other minor offense. Such person could not be represented in such matters by a person who is not a licensed attorney at law.

COURTS; JUSTICES OF THE PEACE; COUNTIES; COUNTY COMMISSIONERS;
COMPLIANCE WITH CHAPTER 1091 OF THE SESSION LAWS OF 1949
AS TO THE APPOINTMENT OF JUSTICES OF THE PEACE

10 February 1954

The adoption of the Justice of the Peace Law, whereby magistrates are placed on salaries when fee system is abolished, is not completed until the first Monday in December of the year in which the Act goes into effect, and magistrates holding under the old system would hold office until the first Monday in December in that year when their offices would expire, and the terms of office of the new magistrates would begin.

ELECTIONS; STRAW VOTE ELECTIONS

10 February 1954

An election must be based on authority conferred by law, and an election held without constitutional or statutory authority is a nullity. There is no statutory or constitutional authority for holding a straw vote election and, therefore, no public funds may be spent to conduct such an election.

OFFICERS; CORONER; RIGHT OF PERSON CONVICTED OF FELONY IN FEDERAL COURT TO HOLD COUNTY OFFICE

11 February 1954

While the authorities throughout the country are conflicting and the North Carolina Supreme Court has never passed directly on the point, it is thought that conviction of a felony in a Federal Court for an offense that is also a felony under State law disqualifies the person convicted from holding a public office in this State. *IN RE EBBS*, 150 N. C. 44; *HULGAN v. THORNTON*, 205 Ga. 753; *MITCHELL v. McDONALD*, 164 Miss. 405; *ARPAGAUSS v. TODD*, 29 N. W. (2d) 810; *OLSON v. LANGER*, 65 N. D. 68 and N. C. Constitution, Article VI, Section 8.

SUPERIOR COURT; JURY TAX; CHARGING JURY TAX IN CRIMINAL CASES

11 February 1954

G. S. 6-5, relating to costs in the form of jury taxes, requires that a jury tax in a criminal proceeding must be charged whether the jury is empaneled or not; in civil cases the jury tax is not charged unless the jury is empaneled.

INHERITANCE TAX; DEDUCTIONS; JOINT NOTE; RIGHT OF CONTRIBUTION

12 February 1954

When a husband and wife own land as tenants by the entireties and in order to erect a building thereon borrow money on their joint note and the husband thereafter dies, the entire note is a debt to be subtracted from the assets of his estate in computing the inheritance tax but nothing else appearing he has a right of contribution against the wife for one-half of the note, which right is an asset of the estate. Assuming the wife is solvent the right of contribution would be worth one-half of the note so the net effect is to allow a deduction of one-half of the note.

SALES TAXES; SALES FOR RESALE; BARREL STAVES

12 February 1954

Sales of hogshead staves to persons who use the staves for packing tobacco and then sell the packed tobacco to manufacturers are sales for resale and are taxable at the wholesale rate.

INCOME TAX; RESIDENCE OF TAXPAYER

15 February 1954

A person who comes to North Carolina from another state where his family remains, and who accepts temporary employment in North Carolina with the intent to return to the other state is not a resident of North Carolina, but if he thereafter accepts permanent employment in North Carolina with the intent to remove his family to North Carolina he is a resident of North Carolina from the time of such change of intentions.

SOLICITORS; DUTY TO MAKE APPLICATION FOR REQUISITIONS FOR FUGITIVES

15 February 1954

Prosecuting attorneys are required by G. S. 15-77 to apply for extraditions of fugitives. The prosecuting attorneys referred to are the prosecuting attorneys of the courts having jurisdiction of the offense involved in the extradition. The district solicitor should apply in all cases within the jurisdiction of the superior court and prosecuting attorneys in city and county municipal courts in cases within their jurisdiction.

POWELL BILL FUNDS; USE FOR STREET MARKERS, TRAFFIC LIGHTS
AND STOP SIGNS

15 February 1954

Powell Bill funds cannot be used for the purpose of providing street markers, traffic lights and stop signs.

INTANGIBLES TAX; DISTRIBUTION TO CITIES AND COUNTIES; HOW CITIES AND
COUNTIES MAY USE SUCH FUNDS

16 February 1954

With respect to intangibles taxes, the statute provides that "the amounts so allocated to each county shall in turn be divided between the county and all municipalities therein in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding such distribution." The statute also provides that "the amounts so allocated to each county and municipality shall be distributed and used by said county or municipality in proportion to other property tax levies made for the various funds and activities of the taxing unit receiving said allotment." Construing the two quoted sentences together, it would appear that a city should distribute its intangibles tax revenues for use in accordance with the tax levies employed in securing its apportionment of funds in the first instance.

LICENSE TAX; SALVAGING SHIPS

16 February 1954

No state license tax is imposed upon a person engaged in the business of salvaging ships, but a state license is required of one who engages in the business of selling junk and scrap metal.

AD VALOREM TAXATION; REAL PROPERTY; EXEMPTIONS; PERSONAL PROPERTY;
EXEMPTIONS; TUBERCULOSIS ASSOCIATION

16 February 1954

Personal property of a benevolent or charitable association, used exclusively for benevolent or charitable purposes, is exempt from ad valorem taxation. However, the exemptions provided with respect to real property of a charitable or benevolent association are much more restricted by particular statutory phrases which must be considered with respect to any given situation.

MOTOR VEHICLES; DRIVERS' LICENSES; TITLE AND REGISTRATION;
EXEMPTIONS; WHAT CONSTITUTES RESIDENCE

16 February 1954

Under the particular fact situation the former resident of this State removing to Virginia is not required to have a North Carolina operator's license or license plates.

MUNICIPALITIES; EXTENSION OF CORPORATE LIMITS; LAND OF MUNICIPALITY
LYING IN TWO COUNTIES

17 February 1954

A municipality situated in two counties may, by a single resolution, call for elections in the two counties, to be conducted by the boards of election of each county, any extension being conditioned upon both elections being favorable to such extension.

BEER AND WINE; ELECTIONS WITHIN SIXTY DAYS OF COUNTY OR MUNICIPAL
ELECTION; TIME FOR CALLING ELECTION

17 February 1954

Construing together G. S. 18-124, subsections (a), (d), (e) and (f), it is thought that a beer and wine election must be called within thirty days after the petition is presented. However, there seems no reason why the election shall be held immediately since the Board of Elections must fix the date so that the same will not be held within sixty days of any general or special election or primary in the county or any municipality located therein.

MUNICIPAL TAXATION; LICENSE TAXES; VALIDITY OF ORDINANCE TAXING
NONRESIDENT MERCHANT

17 February 1954

Under the circumstances set forth, a city may not levy a privilege license tax for the privilege of an outside firm's sending a salesman into the city to take orders and send them to his company for confirmation, the company then making delivery by a later truck shipment.

(1) AD VALOREM TAXATION; TAX FORECLOSURE; SERVICE OF SUMMONS ON
INCOMPETENT

(2) INSANE PERSON; SERVICE OF SUMMONS

(3) MORTGAGES AND DEEDS OF TRUST; SALE UNDER A POWER OF SALE;
FAILURE TO REPORT SALE TO CLERK

18 February 1954

In 1937 the North Carolina statutes did not require that a sale of property pursuant to a power of sale contained in a deed of trust be reported to the Clerk of the Superior Court.

LICENSE TAX; MUSIC MACHINES; COIN OPERATED RADIO AND
TELEVISION SETS

18 February 1954

The license tax on music machines does not apply to coin operated radios or television sets.

INCOME TAX; DEDUCTION; TAX ON REAL PROPERTY IN ANOTHER STATE

18 February 1954

Taxes paid to another state on real property located therein, the other state having an income tax law, are not deductible by a resident of North Carolina in computing his North Carolina income tax.

INCOME TAX; GROSS INCOME; ANNUITIES; TAXATION AFTER COST
RECOVERED; NEW YORK TEACHER'S RETIREMENT BENEFIT

19 February 1954

Retirement pay received by a North Carolinian from a New York public school teacher's retirement system is taxable in the same manner as annuities are taxed under the Federal law. That is, these annuities or pensions are taxable annually on the basis of 3% of the cost only until the taxpayer has recovered his cost. Thereafter the annuity or pension is 100% subject to tax.

COUNTY COMMISSIONERS; FILLING VACANCIES; TIME FOR WHICH
VACANCIES ARE FILLED

19 February 1954

Vacancies in office of county commissioners are filled by the clerk of the superior court for the unexpired term. There is no particular time which the vacancy has to exist before it can be filled.

BEVERAGE CONTROL ACT; A. B. C. STORES; STATE TAX OF 8½%;
LIMITATION OF STATE TAX TO 50% OF NET PROFITS

22 February 1954

Section 519½ of the State Revenue Act limits the State's share of A. B. C. store profits to 50% of the net profits even though this may be less than 8½% of the retail price of liquors sold.

AD VALOREM TAXATION; PERSONAL PROPERTY; PLACE OF LISTING;
AUTOMOBILES USED IN BUSINESS OUTSIDE THE COUNTY

22 February 1954

Ordinarily tangible personal property is listed for taxation at the residence of the owner. However, the property is listed at the place where it is located instead of at the owner's residence when the owner "hires or occupies a store, mill, dockyard, piling ground, place for the sale of property, shop, office, mine, farm, place for storage, manufactory or warehouse therein for use in connection with such property."

INTANGIBLE TAX; CHURCH BONDS

22 February 1954

A bond issued by a church in the construction of its building is subject to the intangibles tax and the interest paid thereon is subject to the income tax.

MUNICIPAL CORPORATIONS; SPECIAL ASSESSMENTS

22 February 1954

The only statutory procedure providing for the enforcement of payment of a street improvement assessment is foreclosure of the lien of the assessment which is in the nature of a court proceeding to foreclose a mortgage.

MOTOR VEHICLES; REGISTRATION; FOREIGN CORPORATIONS

22 February 1954

A foreign corporation doing business in North Carolina and using a motor vehicle in such business must register and procure license plates for it just as a resident of this State must do.

MOTOR VEHICLES; RECKLESS DRIVING; PENALTIES

22 February 1954

The maximum punishment for reckless driving is a fine of \$100.00 and confinement for sixty days in the county or municipal jail.

SCHOOLS; TRANSFERRING FAMILIES FROM NON-LOCAL TAX DISTRICT TO CITY
ADMINISTRATIVE UNIT; CONTIGUOUS REAL PROPERTY

23 February 1954

In a situation in which a city administrative school unit is coterminous with the municipality, the governing body of the municipality is the tax levying authority for the administrative school district. When persons living on land contiguous to the school district come into the district by petition, it is thought that the governing body of the municipality has the authority to levy and collect the special school tax from these taxpayers. G. S. 115-100.

LICENSE TAXES; MUNICIPAL TAX; TRANSIENT MERCHANT

23 February 1954

A city ordinance imposing a license tax of \$100.00 per year upon a person conducting a bankruptcy, fire or similar sale of merchandise conflicts with

G. S. 105-53 (d,g). If the ordinance exempts merchants who have been engaged in business in the municipality for twelve months and who do not add to their stock after commencing business the ordinance is unconstitutional.

DRAINAGE DISTRICTS; INCLUSION OF MUNICIPAL PROPERTY

23 February 1954

A municipality cannot join in a petition for creation of a drainage district to subject property owned by it to drainage assessments and taxes.

FRANCHISE TAX; EXEMPTIONS

24 February 1954

Corporations not organized for profit are subject to the franchise tax unless within the specific exemption of G. S. 105-125.

PUBLIC DRUNKENNESS; RESISTING ARREST

24 February 1954

Drunkenness and disorderliness are essential elements of the offense set forth in G. S. 14-334, and both these elements must be present before a conviction thereof will be sustained. *STATE v. MYRICK*, 103 N. C. 8. A justice of the peace has final jurisdiction under this statute.

Where a person is charged with drunkenness and disorderliness and the disorderliness of the person charged consists only of resisting arrest, such person should perhaps be charged only with resisting officers under G. S. 14-223 and not charged with both offenses. It is thought, however, that a charge under both statutes would be sustained under authority of *STATE v. MIDGETT*, 214 N. C. 107.

MUNICIPALITIES; DONATION OF CITY PROPERTY FOR COURT HOUSE SITE

24 February 1954

Municipalities cannot donate a city block of land to the county for a site of a court house, in the absence of a special Act authorizing it. A county cannot accept a gift of a new court house site which would be more than one mile from existing site. G. S. 153-9 (9).

SENTENCING OF PRISONERS TO COUNTY HOME FOR PUNISHMENT

25 February 1954

Judges of Recorder's Courts and Superior Court Judges may sentence male or female prisoners to the county jail to be assigned to work at the county home or other county supported institutions. Reference G. S. 148-32 and G. S. 153-195.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT OF 1953

26 February 1954

Under the Financial Responsibility Act of 1953, the requirement that security be deposited in event of a motor vehicle accident is not contingent upon a determination by the Commissioner that the operator was at fault.

MOTOR VEHICLES; TAXICABS; LIABILITY INSURANCE; AUTHORITY OF
MUNICIPALITY TO REQUIRE 10/20 COVERAGE

26 February 1954

Municipalities have no authority to require taxicabs to procure liability insurance beyond the 5/10 coverage for each vehicle except in the case of an operator of 15 or more taxicabs, who is required to carry 10/20 on each vehicle.

SALE OF PROPERTY OF INDIGENT PERSON FREE OF HOMESTEAD RIGHT UNDER
PROVISIONS OF G. S. 153-156

26 February 1954

Property of indigent person who becomes chargeable to a county for maintenance and support may be sold under the provisions of G. S. 153-156 free of the homestead right of said indigent if the proceeds are to be applied toward the future support and maintenance of said individual. It appears doubtful that under such circumstances, the property could be sold free of the homestead right in order to satisfy preexisting claims of the county which would appear to have attained the status of a debt.

LICENSE TAXES; PEDDLERS; SALES FROM MOTOR VEHICLE AT DESIGNATED
LOCATION

26 February 1954

A vendor who rents a vacant lot and twice a week parks a motor vehicle on that lot and there sells merchandise from the vehicle and does not go from door to door is not a "peddler" within the meaning of Section 121 of the Revenue Act, although other circumstances may make him an "itinerant salesman or merchant" under Subsection (d) of Section 121.

EXECUTORS AND ADMINISTRATORS; COMMISSIONS WHEN FIXED IN WILL

26 February 1954

When an executor's compensation is fixed in the will at less than the statutory compensation, the executor, by accepting the appointment, is bound by the terms of the will as to his compensation. *LIGHTNER v. BOONE*, 221 N. C. 78; *IN RE LEDBETTER*, 235 N. C. 642.

When the compensation is fixed at less than 5% of the "combined receipts and disbursements," it is thought that the testator intended to include

both principal and income from the estate. Therefore, it is thought that the executor is not entitled to use the language of the will to compute its compensation on principal and the statute (G. S. 28-170) to compute its compensation on income of the estate.

MUNICIPAL CORPORATIONS; CONSTRUCTION OF BUILDING FOR INDUSTRIAL USE FROM NON-TAX FUNDS

1 March 1954

A municipality cannot spend non-tax funds or tax funds for the construction of a building for industrial use.

AD VALOREM TAXES; SPECIAL PURPOSES; APPROVAL OF GENERAL ASSEMBLY

1 March 1954

A special tax for the purpose of defraying the sale and expenses of a county farm agent is for a necessary expense, and when the special approval of the General Assembly has been given therefor, the same may be levied without a vote of the people.

AD VALOREM TAXATION; REAL PROPERTY; EXEMPTIONS

1 March 1954

Under the wording of the ad valorem tax exemption contained in Subsection (4) of G. S. 105-296, it is not enough for the building and land in question to be devoted to educational purposes and to be owned by the organization so using it, but the statute speaks of such building and land as being "actually and exclusively occupied and used for public libraries, colleges, academies, industrial schools, seminaries, or any other institutions of learning."

COUNTIES; CONSTITUTIONAL LAW; VALIDITY OF LOCAL ACT; ABOLISHING OFFICE OF COUNTY TREASURER

1 March 1954

Section 13, originally Section 14 of Article VII of the State Constitution provides that the General Assembly shall have power by statute to modify, change or abrogate any and all of the provisions of this Article (VII) and substitute others in their place except Sections 7, 9 and 13. Section 1 of Article VII provides for a county treasurer.

From the foregoing, it is thought that a local statute abolishing the office of county treasurer and placing the duties of that office upon the county accountant is valid. G. S. 151-1, G. S. 151-3, Chapter 157—Public-Local Laws of 1941, Chapter 512—Session Laws of 1953; **TYRRELL COUNTY v. HOLLOWAY**, 182 N. C. 64.

COUNTIES; RIGHT TO PROVIDE FUNDS FOR THE PURCHASE OF RIGHT OF
WAY FOR STATE HIGHWAY

1 March 1954

Counties are prohibited by G. S. 136-98 from providing funds for the purchase of right of way for the State highways.

OLD AGE ASSISTANCE; G. S. 108-30.1; EFFECT OF LIEN WHERE RECIPIENT IS
DECEASED AND WAS TENANT BY ENTIRETY

1 March 1954

Where there has been no transfer and retransfer of lands for the purpose of avoiding old age assistance lien created by G. S. 108-30.1, the lien will not attach to real estate owned by the recipient as a tenant by the entirety at the time of his death.

FILING FEES FOR COUNTY OFFICERS ON FEE BASIS

4 March 1954

Filing fees for candidates for county offices on a fee basis are a minimum of \$5.00 and 1% of all fees collected in the office for the preceding year in excess of \$500.00.

POWELL BILL FUNDS; BUILDING BREAKWATER NECESSARY TO PROTECT
CITY STREETS

5 March 1954

Powell Bill funds may be used to build a breakwater adjoining a city street, necessary to protect it from being washed away by the river which it fronts.

MUNICIPAL EXTENSION; TIME FOR HOLDING ELECTION; CONFLICT WITH
GENERAL ELECTION

5 March 1954

Municipal elections for extending corporate boundaries may be held at the time of holding general or primary elections and there is no statute which prohibits the holding of same at such times or within any other given period from the time of holding of primaries or general elections.

BANKS; CONSOLIDATION; MERGER

5 March 1954

A state and federal bank may merge, as authorized by North Carolina statutes, and file a certified copy of resolutions of merger and approval

by the Commissioner of Banks, as provided by G. S. 53-13, and the filing of such copies and approval by the Commissioner of Banks would not change the merger of such banks into a consolidation without affecting the status of the surviving corporation.

TAXATION; PERSONAL PROPERTY LOCATED OUT OF MUNICIPALITY

5 March 1954

Personal property leased to a corporation and used in a mill located outside of a municipal corporation cannot be taxed against the owning corporation whose principal office is located within such municipality, under the provisions of G. S. 105-302, Subsection 4, as the leasing corporation would have the control of such property.

SCHOOLS; TERM OF OFFICE OF MEMBERS OF BOARD OF EDUCATION OF GRAHAM COUNTY

5 March 1954

Since an office is not property, it is thought that the General Assembly has authority to reduce or extend the term of legislative officials. Of course this rule does not apply to constitutional officers. G. S. 115-38 points out the procedure for the nomination and appointment of members of county boards of education. *HOKE v. HENDERSON*, 15 N. C. 1, *MIAL v. ELLINGTON*, 134 N. C. 131, and *PENNY v. BOARD OF ELECTIONS*, 217 N. C. 276.

SIGNATURES; REGISTER OF DEEDS; CANCELLATION OF INSTRUMENTS; USE OF FACSIMILE STAMP

5 March 1954

Since the authorization of a register of deeds for the cancellation of instruments of record is purely statutory, it is thought that in the absence of express statutory authority, a register of deeds is not justified in cancelling instruments of record when the entry of satisfaction is made on the mortgage and notes by a facsimile signature. G. S. 45-37(2); G. S. 115-368(2) and *LEE v. PARKER*, 171 N. C. 144.

MARRIAGE LAWS; CAPACITY TO MARRY

5 March 1954

Two persons nearer of kin than first cousins may not legally be married in this State. See G. S. 51-3. This statute also provides that double first cousins may not legally be married.

MOTOR VEHICLES; "DYNATONE" AND "TRUETONE" MUFFLERS

5 March 1954

Whether a muffler conforms to G. S. 20-128 is a question of fact to be determined by the trial court.

JUSTICE OF THE PEACE; FEES

5 March 1954

A justice of the peace may not receive any compensation from the County Board of Education, or any other source, for taking and reporting a bond from a defendant charged with speeding other than the compensation set forth in the statute.

INHERITANCE TAX; INTEREST

5 March 1954

Interest on inheritance taxes begins to run twelve months from date of death if the decedent died prior to July 1, 1953, and fifteen months from date of death if the decedent died after July 1, 1953.

MUNICIPAL CORPORATIONS; SPECIAL ASSESSMENTS; STATUTE OF LIMITATIONS

8 March 1954

The ten-year statute of limitations is applicable to collection of special assessments by municipalities. G. S. 160-93; CHARLOTTE v. KAVANAUGH, 221 N. C. 259; RALEIGH v. BANK, 223 N. C. 286.

JUSTICE OF THE PEACE; DELEGATION OF A PRIVATE CITIZEN TO MAKE
ARRESTS; AUTHORITY TO APPOINT SPECIAL CONSTABLES

8 March 1954

G. S. 151-5 provides as follows:

"For the better executing of any precept or mandate, in extraordinary cases any justice of the peace may direct the same, in the absence of or for want of a constable, to any person not being a party, who shall be obliged to execute the same under like penalty that any constable would be liable to."

Our court has held that this section does not authorize the appointment of a special constable except in extraordinary cases and would not justify the practice of a justice of the peace naming special constables to serve criminal process who, in effect, would serve as a regular constable in connection with a particular justice of the peace.

MUNICIPAL CORPORATIONS; RECREATIONAL FACILITIES; CONTRACTS

8 March 1954

A city may not enter into a partnership agreement with a group of individuals whereby the city binds itself to operate in its park a miniature train, the cost of which train is to be paid initially by such group, which is to recover its investment from the profits of operations and is thereafter to pay in such profits.

MUNICIPALITIES; PURCHASE OF DAM SITE FROM OWNERS, INCLUDING
MEMBER OF BOARD OF ALDERMEN; CONDEMNATION

9 March 1954

A municipality may condemn the site for a water supply dam in which a member of the Board of Aldermen has an interest without violating G. S. 14-234. The member of the Board having an interest in the property should abstain from voting on any resolutions with respect to it.

PUBLIC HEALTH; VITAL STATISTICS; ESTABLISHING BIRTH BY PERSON
WITHOUT CERTIFICATE; COUNTY IN WHICH THE PETITION
CAN BE FILED

9 March 1954

G. S. 130-107 provides that a person who desires to establish the fact of birth without certificate and have the same certified to the register of deeds can file his petition with the Clerk of the Superior Court in either the county of his legal residence or the county of his birth, and this gives him a choice of two counties in which this petition can be filed.

LIENS; LIEN FOR PROCESSING CERTAIN GOODS

10 March 1954

G. S. 44-4 provides for a lien of finishers, bleachers, and others to secure charges for work, labor, and materials in respect to the processing of cotton, wool, silk, artificial silk or goods of which cotton, wool, silk, or artificial silk forms a component part.

COUNTIES; ELECTIONS IN RURAL FIRE PROTECTION DISTRICTS UNDER
ARTICLE 3-A, CHAPTER 69, OF THE GENERAL STATUTES

11 March 1954

From the language of G. S. 69-25.1, it is doubted that incorporated cities and towns may be included in a rural fire protection district organized under Article 3-A, Chapter 69, of the General Statutes. It is also doubted that a tax for such purpose can be levied on property located in incorporated cities and towns. It is also thought the county commissioners may not call an election under this article without a petition signed by at least 15% of the resident freeholders within the area. It is further thought that if county-wide fire protection is to be furnished, the procedure must be either under the provisions of G. S. 153-9(39) or a special act of the legislature.

ELECTION LAWS; PRIMARIES; FILING FEES FOR MEMBERS OF THE
GENERAL ASSEMBLY

11 March 1954

Under the language of G. S. 163-120, it is thought that candidates for membership in the General Assembly are required to pay a filing fee of

\$13.50 even though their term of office is two years. This conclusion is reached partly because of the language of G. S. 163-120 and partly because regular sessions of the General Assembly occur during the first year of the term of the members. Article II, Section 28; Article II, Section 2, of the State Constitution and G. S. 120-3.

ELECTIONS; FILING FEES OF CANDIDATES; DISPOSITION OF SAME

11 March 1954

Filing fees collected by the Chairman of the County Board of Elections must be paid to the County Treasurer, as required by the Daily Deposit Act (G. S. 153-135), which Act imposes criminal penalties for failure to comply therewith. Compensation of the Chairman of the County Board of Elections should be provided by appropriation made by the Board of County Commissioners.

STATE LANDS; BOUNDARIES; SETTLEMENT OF DISPUTES BETWEEN STATES

11 March 1954

The United States Supreme Court has original jurisdiction of a suit to establish by judicial decree the true boundary line between states of the Union. A suit in equity instituted by the state alleging that its boundary line is in dispute between another state should be entered in the Supreme Court of the United States.

A number of disputes have arisen between states, and suits have been brought and decided by the United States Supreme Court. Among these cases will be found *MARYLAND v. WEST VIRGINIA*, 217 U. S. 1; *TENNESSEE v. NORTH CAROLINA*, 235 U. S. 1; and *OKLAHOMA v. TEXAS*, 272, U. S. 21.

MOTOR VEHICLES; COURTS; PENALTIES; FORFEITURE OF BOND; CAPIAS

11 March 1954

The Motor Vehicle Law requires that a notation of conviction of any violation of the Motor Vehicle Law be entered upon the driver's license of the defendant. Forfeiture of a bond is a conviction within the meaning of the driver's license law. Notwithstanding the forfeiture of bond, a capias may be issued and the defendant required to appear personally or by counsel for the trial of the case.

LICENSE TAXES; REAL ESTATE AGENTS; COLLECTING RENTS FOR COMPENSATION; SECTION 109

11 March 1954

Section 105-41 of the General Statutes imposes a privilege license tax on any person engaged in the business of "collecting any rents as agent for another for compensation."

MILK COMMISSION; BOARD OF HEALTH; LICENSES AND PERMITS

12 March 1954

It is not necessary for a distributor or producer distributor, making application to a local health board for a permit to operate in a county, to first secure from the North Carolina Milk Commission a license to operate.

(1) LICENSE TAXES; SALE AND INSTALLATION OF AWNINGS

(2) MUNICIPAL TAXATION; SALE AND INSTALLATION OF AWNINGS

12 March 1954

Subject to the limitations contained in the Revenue Act, Section 160-56 of the General Statutes provides that the governing body of a city or town "may annually lay a tax on all trades, professions and franchises carried on or enjoyed within the city, unless otherwise provided by law."

The statute does not prescribe any uniform rate of license tax, and the exercise of the authority granted therein would have no limitation other than that the amount of the tax levied should not be unreasonable.

MOTOR VEHICLES; LICENSE PLATES; MILITARY RESERVATION; OFFICERS' OPEN MESS

15 March 1954

An Officers' Open Mess which is a social club supported by contributions of its members and is a voluntary organization, is not an instrumentality of the United States so as to exempt a pick-up truck, owned and operated by the Mess, from the North Carolina statute requiring the owner of a motor vehicle to be operated on the highways of this State to procure therefor a license plate.

INTANGIBLES TAX; BENEFICIAL INTEREST IN FOREIGN TRUSTS; REMAINDER INTEREST IN IRREVOCABLE TRUST

15 March 1954

A resident remainderman beneficiary of a foreign trust in which the settlor reserves a life tenancy and the power to revoke is liable for intangibles tax on the value of the corpus diminished by the interest of the settlor, the value of the settlor's right to revoke, and the limited ownership due to the equitable nature of the interest. It would appear that the interest of the remainderman beneficiary for intangibles tax purposes approaches a zero value.

EXTRADITION; ARREST OF FUGITIVE

15 March 1954

A fugitive from justice from another state can be arrested in this State upon sworn information presented to a magistrate of this State, or if the crime is punishable by death or imprisonment for more than

one year in the demanding state, such fugitive in this State may be arrested upon reasonable information without a warrant.

CIVIL PROCEDURE; EXECUTIONS; ALLOTMENT OF HOMESTEAD; COSTS
DEMANDABLE IN ADVANCE

16 March 1954

G. S. 138-2 specifically provides that in civil cases officers may demand their fees in advance and that no officers shall be compelled to perform any service unless his fee is paid or tendered to him. The following cases hold that this section is applicable to the Sheriff: LUTE v. REILLY, 65 N. C. 20; LONG v. WALKER, 105 N. C. 90 and WHITMORE v. HYATT, 175 N. C. 117. See also G. S. 6-1, 6-6 and 6-28.

From the foregoing it will be seen that a sheriff has the right to demand his fees in advance before allotting the homestead and personal property exemptions and selling the remainder of the defendant's property under execution. The plaintiff who has advanced the cost is entitled to reimbursement out of the proceeds of the sale of the property.

AD VALOREM TAXATION; MUNICIPALITIES; EXTENSION OF CORPORATE
LIMITS; TIME WHEN ANNEXED AREA SUBJECT TO
AD VALOREM TAXATION

16 March 1954

Under the provisions of G. S. 160-449, property in the new territory annexed to the corporate limits of a city or town is subject to municipal ad valorem taxes for the fiscal year following the date of annexation. Thus, if annexation takes place in April, 1954, the property in the annexed territory becomes subject to municipal property taxes levied for the fiscal year beginning July 1, 1954, which become due in October, 1954.

AD VALOREM TAXES; PERSONAL PROPERTY; LISTING; PLACE OF LISTING;
TRUCKS SERVICED AND PARKED WITHIN CORPORATE LIMITS

16 March 1954

Personal property must ordinarily be listed at the residence of the owner for ad valorem tax purposes. However, the statute makes an exception to the general rule and provides specifically that personal property shall be listed "at the place where such property is situated, rather than at the residence of the owner, if the owner or person having control thereof hires or occupies a store, mill, dockyard, piling ground, place for the sale of property, shop, office, mine, farm, place for storage, manufactory or warehouse therein for use in connection with such property."

AD VALOREM TAXES; FORECLOSURE OF TAXES; FORECLOSURE IN AND BY ONE
COUNTY WITH RESPECT TO REAL PROPERTY IN ANOTHER COUNTY

16 March 1954

Even though an owner of real property listed in County A property which he thought was in County A, but which was in fact in County B,

it is my opinion that foreclosure proceedings by County A for County A taxes would not convey a valid title to the property in question.

SALE PURSUANT TO A POWER OF SALE CONTAINED IN A CONDITIONAL
SALES CONTRACT

17 March 1954

Under the provisions of G. S. 45-21.5, it seems to be the intent of the statute that a sale pursuant to a power of sale contained in a conditional sales contract should be held either in the county where the instrument was recorded or in the county where the property was repossessed.

SALES TAX; OPTICIAN; SALE OF GLASSES TO OPTOMETRIST, OCULIST, OR
PHYSICIAN

17 March 1954

A sale of glasses by a manufacturer to an optometrist, oculist, or physician for resale to the buyer's patients is exempt from the sales tax. A sale by the manufacturer to the consumer or user is not exempt. The optometrist, oculist, or physician selling glasses to his patient is a retail merchant within the meaning of the Sales Tax Act and must register as such and pay the sales tax on glasses so sold.

CONSTABLES; NEGLECT IN PERFORMANCE OF DUTY; REMOVAL FROM OFFICE

17 March 1954

Constables can be removed from office for failure to perform their duties, as authorized by G. S. 128-16, and vacancies are filled by the Board of County Commissioners, as authorized by G. S. 151-6.

TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM; ARTICLE II, §31
OF NORTH CAROLINA CONSTITUTION

17 March 1954

The funds accumulated out of the Teachers' and State Employees' Retirement System can only be spent for Retirement System benefits and Retirement System purposes, as provided by Article II, §31 of the N. C. Constitution. These funds cannot be used to finance any system of retirement sponsored by the Federal Government unless the constitutional provisions are repealed, retired members of the System are protected by sufficient funds reserved for such purpose, and authorization is given by the General Assembly of North Carolina to participate in a Federal program of retirement.

DIVORCE LAWS; COURT COSTS; ATTORNEY'S FEES

18 March 1954

In order to institute a divorce proceeding in this State, a person must prepare his own complaint or employ an attorney to do so for him. The

only costs in connection with securing a divorce in such case would, of course, be attorney's fees and the court costs.

MOTOR VEHICLES; FIRE TRUCKS; SPEED LIMITS; STOP SIGNS;
ONE-WAY STREETS

18 March 1954

Unless the city ordinance providing for traffic lights excepts fire trucks, such trucks must observe such lights even though going to answer a fire alarm. Similarly, the fire truck must observe stop signs erected at the intersection of streets by the Highway Commission and such signs erected by the city if the city ordinance does not except fire trucks from its operation. The speed limits established by the Motor Vehicle Law do not apply to fire trucks moving in answer to a fire alarm, but speed limits fixed by city ordinance do apply to fire trucks unless the ordinance excepts them. A city ordinance establishing a one-way street applies to fire trucks unless the ordinance excepts such trucks.

SALES TAX; BOTTLED GAS

18 March 1954

One who receives service from a gas company serving its patrons through mains laid in the streets is not deemed to be a purchaser of a commodity but of a service, and, therefore, is not required to pay a sales tax on his gas bill. The purchaser of a cylinder of bottled gas is required to pay the sales tax on such gas and regarded for purposes of the Sales Tax Act as a purchaser of a commodity.

- (1) POLL TAX; EXEMPTIONS; NO EXEMPTION WHILE PERSON IN PRISON
- (2) CITIZENSHIP; LOSS OF CITIZENSHIP; RESTORATION OF CITIZENSHIP

18 March 1954

Imprisonment as punishment for crime does not exempt a person from liability for poll tax.

INTANGIBLES TAX; BENEFICIAL INTEREST IN FOREIGN TRUST; LIABILITY
FOR TAX OF SETTLOR-LIFE BENEFICIARY WITH POWER TO REVOKE

18 March 1954

A settlor-life beneficiary of a foreign trust in which the settlor reserves the power to revoke is liable for intangibles tax on the value of the corpus diminished by any amount that she might show is attributable to the remainderman's interest and the fact that the property is held in trust rather than owned in fee by the settlor.

MOTOR VEHICLES; TITLE AND REGISTRATION; SPECIAL MOBILE EQUIPMENT;
"LOGGERS DREAM"

19 March 1954

A truck with a "loggers dream" must carry license plates even though the only operation upon the highways is when it is moved from one logging job to another.

CRIMINAL LAW; BREAKING AND ENTERING; LARCENY; FELONIES
AND MISDEMEANORS

19 March 1954

The provisions of G. S. 14-72, which make it a misdemeanor to steal property under the value of \$100.00, do not apply to the offense of first and second degree burglary or to the offense of breaking and entering an uninhabited building under G. S. 14-54.

NORTH CAROLINA STATE PORTS AUTHORITY; OPERATING FUNDS OF THE PORT;
EMPLOYEES OF THE PORT PAID FROM OPERATING FUNDS NOT
ENTITLED TO 10% BONUS

22 March 1954

An employee of the State Ports Authority who is paid from "operating funds" is not an employee within the meaning of Sections 19, 20 and 21 of Chapter 1165 of the Session Laws of 1953, which provides for a bonus to State employees.

COUNTIES; AUTHORITY TO EXPEND PUBLIC MONEY TO OPEN STREETS

24 March 1954

Counties are prohibited by G. S. 136-98 from levying any taxes or spending any county funds for the purpose of opening up roads or streets.

MOTOR VEHICLES; CITY POLICE; POWER OF ARREST

24 March 1954

In the absence of local legislation a city police officer has no greater power of arrest outside the city than does a private citizen, unless the city has a municipal recorder's court, the jurisdiction of which has been extended to the borders of the township. In the later case, the police officers of the city have the same powers of arrest as does the sheriff for crimes committed within the township.

MOTOR VEHICLES; MUNICIPAL LICENSE PLATES

24 March 1954

A city may require a license tag to be purchased for a motor vehicle "resident therein" which means a motor vehicle customarily parked or garaged within the city when not in use. The residence of the owner and the place where the vehicle is principally used are immaterial.

ENTRIES; SURVEYS BY COUNTY SURVEYORS; PAYMENT OF FEES IN ADVANCE

25 March 1954

A county surveyor is required to make the survey of an entry as mentioned in the statute, but has a right to demand in advance his fees

and compensation for helpers in making the survey. The county surveyor must survey the entry in accordance with its terms and cannot omit land which he thinks belongs to other people not subject to entry.

SCHOOLS; MEMBERSHIP ON COUNTY BOARD OF EDUCATION; TEACHER IN
PUBLIC SCHOOLS INELIGIBLE

26 March 1954

G. S. 115-43 would seem to disqualify a member of a county board of education from teaching in the public schools anywhere in the State and not simply in the county of his residence.

TAXATION; POLL TAX; EXEMPTION OF FIREMEN

26 March 1954

Under present tax exemptions relating to poll taxes, firemen are not exempted from poll tax, nor is any board or officer authorized to make such an exemption.

JUSTICES OF THE PEACE; TERM OF OFFICE; ELIGIBILITY FOR OFFICE

26 March 1954

A justice of the peace appointed by the Governor, under G. S. 7-115, holds office for a term of four years. A justice of the peace elected under G. S. 7-113, holds office for a term of two years from and after the first Monday in December following his election. There seems to be no reason why a person serving as justice of the peace, under an appointment by the Governor should be ineligible, for that reason alone, to be a candidate for justice of the peace in a primary election.

ELECTIONS; CUSTODY OF REGISTRATION BOOKS

29 March 1954

Under G. S. 163-49, the registration books, when not in use for conducting an election or primary, are in the custody of the chairman of the county board of elections.

CRIMINAL LAW; JUDGMENTS; SENTENCES; COMMITMENTS; AUTHORITY OF
SHERIFF TO AMEND COMMITMENT; AUTHORITY OF CLERK
TO AMEND COMMITMENT

29 March 1954

The Clerk of Superior Court can amend erroneous commitments to make same conform to judgment or sentence of the court, and this can be done by him, not only on commitments issued by him, but such amendments may be made as to commitments issued by his predecessors in office.

COUNTIES; COUNTY COMMISSIONERS; AUTHORITY TO PAY PREMIUMS ON
PHYSICIAN'S LIABILITY POLICY TO PROTECT COUNTY PHYSICIAN

29 March 1954

Neither the Board of County Commissioners nor the Local Health Unit is authorized to pay the premium on a policy to protect the County Physician from liability for the performance of his governmental duties. It would be a rare case, if any, in which a county physician would be liable unless he acted with wanton or malicious motives.

MOTOR VEHICLES; THROWING BURNING MATERIAL FROM MOTOR VEHICLES

29 March 1954

There is no statute in this State covering the throwing away of burning material from motor vehicles.

MUNICIPALITIES; LETTING OF CONTRACTS FOR DEEP WELL

30 March 1954

The expenditure of \$3,000 for drilling a well and \$2,000 for the purchase of a pump by a municipality requires the letting of a contract therefor, as required by G. S. 143-129.

LICENSE TAXES; NURSERIES AND FLORISTS

31 March 1954

There is no State license tax upon a nurseryman who places his products in stores on consignment for sale.

ADMINISTRATION; G. S. 28-68.2, SUBSECTION (2); DISBURSEMENT BY CLERK
OF ASSETS TO PAY CLAIMS FOR FUNERAL EXPENSES

31 March 1954

Relatives who pay funeral expenses of decedent as a matter of affection and duty are entitled to reimbursement to the extent that assets of the estate are sufficient.

SALES TAX; EXEMPTIONS; PRIVATE MEDICAL CLINICS

1 April 1954

A sale of tangible personal property to a private medical clinic operated for profit is subject to the retail sales tax, or the use tax, unless the property is of a type exempted by G. S. 105-169. The fact that the clinic does a relatively small amount of charity work does not exempt sales to it. Sales of medicines by the clinic to patients in connection with medical treatment are exempt from the sales tax.

INCOME TAX; GROSS INCOME; ANNUITIES; TEACHERS RETIREMENT SYSTEMS
OF OTHER STATES; PURCHASED ANNUITY

2 April 1954

Income received by reason of participation in an out-of-State governmental retirement system is ordinarily subject to the North Carolina income tax after recovery of the cost to the taxpayer, that is, after recovery of contributions made to the system.

INCOME TAX; PUBLIC SERVICE CORPORATIONS; CARRY-FORWARD LOSS

5 April 1954

A public service corporation required to keep its accounts in accordance with regulations of the Interstate Commerce Commission may not deduct a net economic loss sustained in a prior year in computing its taxable income.

MOTOR VEHICLES; MUNICIPAL CORPORATIONS; FINANCIAL RESPONSIBILITY
ACT OF 1953

5 April 1954

A municipality is not liable to suit for injury caused by the negligent operation of its motor vehicle unless the municipality has procured liability insurance and thereby waived its governmental immunity.

MOTOR VEHICLES; FINANCIAL RESPONSIBILITY ACT OF 1953; DEAF DRIVERS

5 April 1954

A deaf person, otherwise qualified, may procure a driver's license. He is not required to carry liability insurance under the Financial Responsibility Act but may post bond if involved in an accident.

POWELL BILL FUNDS; USE OF FUNDS TO CONSTRUCT SIDEWALKS, CURBS,
GUTTERS, AND DRAINS; USE OF POWELL BILL FUNDS TO PAY OFF
BONDS ISSUED FOR SUCH CONSTRUCTION

5 April 1954

Powell Bill funds may be expended for the construction of necessary curbs and gutters, and to extend the necessary drainage gutters to an outlet, although crossing private property in order to do so.

NATIONAL GUARD; APPROPRIATIONS BY MUNICIPALITIES FROM PUBLIC FUNDS

5 April 1954

Under G. S. 143-236, municipalities are specifically authorized to appropriate public funds for the benefit of any unit or units of the National Guard. Public funds either from tax or nontax sources may be so appropriated.

DUTIES OF COUNTY ELECTRICAL INSPECTORS

6 April 1954

A County electrical inspector's duty is to enforce all State and local laws governing electrical installations and materials, and to make inspections as to the proper installation. This duty does not include the enforcement of State laws regarding unlicensed electrical contractors. The question of whether the person making the electrical installation is licensed or not, is a matter for other authorities.

LIBRARIES; COMBINED OFFICE OF SECRETARY-TREASURER; HOW FUNDS
ARE PAID OUT

6 April 1954

Under the language of the first paragraph of G. S. 160-69 as rewritten by Chapter 721, Session Laws of 1953, it is thought that one person may serve both as secretary and as treasurer of a local public library board of trustees.

It is thought that the new section, now codified as G. S. 160-70, repealed the section formerly codified as G. S. 160-67. Therefore, it is thought that funds belonging to a county library must be deposited with the county treasurer, ear-marked for the use of the library and must be paid out on warrants signed by the treasurer of the library board of trustees and countersigned by the county accountant.

- (1) MOTOR VEHICLES; HIGHWAY PATROL AND OTHER OFFICERS; PATROL ARREST FEES; DISPOSITION; PATROL ARREST FEES TO COUNTY GENERAL FUND
- (2) COSTS; HIGHWAY PATROL ARREST FEES; SUCH FEES PAID TO COUNTY FUND
- (3) ARREST FEES; PATROLMEN; SAID FEES TO COUNTY GENERAL FUND

7 April 1954

Section 20-193 of the General Statutes provides as follows:

"All fees for arrests or service of process that may be taxed in the bill of costs for the various courts of the State on account of the official acts of the members of the State Highway Patrol shall be remitted to the general fund in the county in which the said cost is taxed."

ELECTIONS; PRIMARY ELECTIONS; PERSON FILING AS CANDIDATE FOR
OFFICE WHO IS NOT REGISTERED

7 April 1954

Under G. S. 163-119 a person who has been a resident of the State for over a year but who has not been in the precinct, ward or other election district for four months can become a candidate in a party primary by taking the necessary pledge as required by the statute.

GIFT TAXES; GIFT BY RESIDENT; STOCK LOCATED OUTSIDE STATE

12 April 1954

A North Carolina resident makes gifts to nonresidents of intangible personalty located in North Carolina. Nothing else appearing, such gifts are taxable under the North Carolina Gift Tax.

SALES TAX; PHOTOGRAPHERS; PORTRAIT PHOTOGRAPHS

12 April 1954

The Sales Tax Division of the Revenue Department has consistently interpreted the sales tax law so as to impose sales tax at the rate of 3% on the entire charge made by the photographer for portraits irrespective of whether the portrait photographs are made in the customers' homes or in the Photographer's studio. This interpretation has been concurred in by the Attorney General's office.

AD VALOREM TAXATION; COLLECTION AND FORECLOSURE OF TAXES; TOWN OF NEWPORT; REPEAL OF LOCAL LAW BY GENERAL LAW

12 April 1954

It would appear that the Machinery Act supersedes the local laws relating to the Town of Newport, enacted prior to the Machinery Act, with respect to the collection of ad valorem property taxes.

AD VALOREM TAXATION; PERSONAL PROPERTY; COLLECTION AND FORECLOSURE; LIENS; PRIORITY OF LIENS

12 April 1954

The question of the priority of liens on personal property, where property taxes are concerned, is covered by Subsection (c) of G. S. 105-376, which reads in part as follows:

"The tax lien when it attaches to personal property, shall, in so far as it represents taxes assessed against the property to which it attaches, be superior to all other liens and rights, whether such other liens and rights are prior or subsequent to the tax lien in point of time. In so far as said tax lien represents taxes not assessed against such property, said tax lien on personal property shall be inferior to prior valid liens and superior to all subsequent liens. As between the liens of different taxing units, the lien first attaching shall be superior."

AD VALOREM TAXATION; REAL PROPERTY; EXEMPTIONS; STATE GRANGE PROPERTY; STATE GRANGE PROPERTY NOT EXEMPT

12 April 1954

Real property owned by the North Carolina State Grange for grange purposes and for rental purposes is not exempt from ad valorem taxation.

MUNICIPAL TAXATION; PRIVILEGE LICENSE TAXES; GENERAL AUTHORITY TO
LEVY LICENSE TAXES; G. S. 160-56; FURNITURE DEALERS

12 April 1954

A city has authority under Section 160-56 of the General Statutes to levy a reasonable license tax on the business of operating a furniture store.

MUNICIPAL TAXATION; AUCTION SALES

12 April 1954

A municipality has general authority to impose a license tax upon the business of engaging in auction merchandising.

SCHOOLS; ELECTION AND TERM OF OFFICE OF CITY SUPERINTENDENT

13 April 1954

Since the fourth paragraph of G. S. 115-353 stipulates simply that the qualifications, approval and date of election of a city superintendent shall be the same as for a county superintendent, and makes no mention of advertisement in a newspaper and the posting of a notice of intent to elect at the courthouse door, it is doubtful that the legislative intent was to require the advertisement and posting of notice in the case of the election of a city superintendent.

ELECTIONS; REGISTRATION OF VOTERS; NEW REGISTRATION

13 April 1954

County boards of elections have authority to order a new registration, as authorized by the statute—G. S. 163-31 and G. S. 163-47.

LICENSE TAXES; TOURIST HOMES; SECTION 126½

14 April 1954

Sections 126½ and 127 of the Revenue Act impose license taxes on tourist homes and restaurants.

AD VALOREM TAXATION; PERSONAL PROPERTY; TAX SITUS; INTERSTATE
EXPRESS TRUCKS

14 April 1954

When a number of trucks are used regularly in interstate commerce, it probably would be constitutional to impose a local ad valorem tax with respect to the average number regularly kept in a particular town in this State, but it is doubtful whether the provisions of the Machinery Act actually cover such a situation.

AD VALOREM TAXATION; CONDEMNATION BY HIGHWAY COMMISSION;
ACQUISITION OF FEE SIMPLE TITLE; WHEN TITLE PASSES;
PROPERTY OF . . .

14 April 1954

Under the facts set forth in this case, it would appear that the title to the real property in question passed to the State Highway and Public Works Commission for all practical purposes prior to January 1, 1954, and, therefore, such property would not be subject to 1954 ad valorem taxation.

ELECTIONS; VOTING PRECINCTS; TOWNSHIP LINES

14 April 1954

County boards of election are authorized to establish voting precincts. G. S. 163-22 requires that there shall be at least one polling place in every township. Constables and justices of the peace are elected as township officers and, although there is no express prohibition against a voting precinct extending beyond township lines, it is recommended that they be confined to township lines.

ELECTIONS; EMPLOYEES OF THE STATE HIGHWAY COMMISSION;
ELECTION OFFICIALS

14 April 1954

Prohibition against a person holding an office or place of trust or profit acting as an election official is inapplicable to employees of the State Highway and Public Works Commission who are not officers but merely employees.

SCHOOLS; SCHOOL STORES; PRIVILEGE AND SALES TAX ON ARTICLES
SOLD IN SCHOOL STORES

14 April 1954

G. S. 66-58 seems to prohibit generally the selling of merchandise by the public schools. Subsection (c) thereof would seem to expressly authorize the operation of school cafeterias and the sale of textbooks, library books, forms, bulletins and instructional supplies by the public schools. It is thought that purchases from a "school store" should be limited to enrolled pupils and teachers. It is doubtful that any business license is required for the operation of a "school store." However, the sale of school supplies, made by the public schools, is taxable at the retail rate of 3%. G. S. 105-169 and G. S. 105-165(g and q). Since lunchrooms are specifically authorized by G. S. 115-381, it is thought that they are not subject to license taxes and sales taxes. It is thought that ice cream is a food and may legitimately be handled in connection with a school lunchroom.

CONSERVATION AND DEVELOPMENT; TAKING FISH FOR SCIENTIFIC PURPOSES;
USE OF POISONOUS SUBSTANCES

15 April 1954

Neither the Board of Conservation and Development nor the Director of Conservation and Development can permit a scientist to take fish from North Carolina waters by the use of poisonous substances.

MUNICIPAL CORPORATIONS; AUTHORITY IN ORDINANCES; POWER TO DELEGATE
TO PRIVATE ORGANIZATIONS

15 April 1954

A municipal corporation does not have the authority to delegate to a private organization the right and power to make rules and regulations governing the fishing in a lake owned by the municipal corporation for water supply, as it is the duty of the municipality to appoint wardens and regulate the affairs of the lake itself.

SCHOOLS; CURRENT EXPENSE BUDGET

20 April 1954

G. S. 115-157(a) provides for the current expense budget for the public schools. In the case of BOARD OF EDUCATION OF ONSLOW COUNTY v. BOARD OF COMMISSIONERS, handed down on April 14th, 1954, the Supreme Court held that this statute is to be construed together with G. S. 115-356, which sets out the purposes for which State school funds are expended; the court holding that the county current expense budget is simply to supplement State funds. As modified by G. S. 115-356, it is the duty of county authorities to levy and collect a county-wide tax to supply the items enumerated in G. S. 115-157(a).

LICENSE TAXES; REAL ESTATE AGENTS; SECTION 109

20 April 1954

The privilege license of a real estate or rental agent covers the period from June 1st to the following May 31st. A license purchased between January 1st and May 31st, for the period ending on May 31st, costs only one-half price.

MUNICIPAL CORPORATIONS; EMPLOYEES; AUTHORITY TO PAY
CHRISTMAS BONUSES

21 April 1954

A municipality has no authority to arbitrarily grant Christmas bonuses according to the discretion of the governing authority. It can, however, set up a uniform salary scale applicable to all employees whereby a percentage of increase is granted on the salary for a particular month.

AD VALOREM TAXES; PERSONAL PROPERTY; TAX SITUS; TRUCKS KEPT AT
RESIDENCE IN TOWN; TAXIS OPERATED IN TOWN BUT GARAGED
OUT OF TOWN

22 April 1954

A truck must be listed for ad valorem taxation at the residence of the owner unless the facts of the case bring such property within the exceptions set forth in G. S. 105-302 (4), which exception provides that personal property shall be listed for ad valorem taxation at the place where it is situated, rather than at the residence of the owner, "if the owner or person having control thereof hires or occupies a store, mill, dockyard, piling ground, place for the sale of property, shop, office, mine, farm, place for storage, manufactory or warehouse therein for use in connection with such property."

SALES TAXES; SALES IN NORTH CAROLINA; DELIVERY IN NORTH CAROLINA;
INVOICED OUTSIDE NORTH CAROLINA

23 April 1954

Machinery corporation, a North Carolina corporation, manufacturing and dealing in textile machinery, receives an order from textile manufacturer from its home office located in the State of Virginia. Later, and prior to delivery date of the machinery, machinery dealer is directed by the home office of the textile manufacturer to deliver machinery to one of its textile plants located in the State of North Carolina. Invoice for machinery was sent to the Virginia office and was paid by it; however, invoice shows machinery delivered in North Carolina. The transaction is subject to the North Carolina sales tax. Whether the transaction is entitled to the limited exemption for mill machinery must be determined by the nature of the machinery and the use to which it is put.

MOTOR VEHICLES; DRIVERS' LICENSES; CONVICTION, WHAT IS;
NOLO CONTENDERE

23 April 1954

Pending further clarification by our Supreme Court, the Department of Motor Vehicles is authorized to revoke the license of an operator entering a plea of nolo contendere to a charge of drunken driving.

ELECTION LAWS; FILING FEES; EXPENSE ALLOWANCE NOT CONSIDERED
IN DETERMINING AMOUNT OF FILING FEES

23 April 1954

In determining the amount of filing fee a public officer is to pay when he files for nomination, the amount of an expense allowance should not be taken into consideration.

AD VALOREM TAXATION; LISTING AND ASSESSING; CITY LISTS

26 April 1954

Section 105-333 of the General Statutes provides that:

"All cities and towns may obtain their tax lists from the county records without securing lists signed by the taxpayers, or may set up their own machinery for securing lists from the taxpayers, in the discretion of the governing body."

CORPORATIONS FOR RELIGIOUS PURPOSES

26 April 1954

Religious, charitable and eleemosynary non-profit, non-stock corporations may be organized under the provisions of the general law, Chapter 55 of the General Statutes.

ELECTIONS; ABSENTEE VOTING; CREWS OF MENHADEN SHIPS

26 April 1954

Members of the Merchant Marine authorized to vote in primaries and elections by G. S. 163-77.1 do not include fishermen and individuals in private employment in fishing fleets, etc. The section has reference only to the Merchant Marine created by Act of Congress and serving under the Maritime Commission.

ELECTIONS; MARRIED WOMAN USING PREFIX "MRS." TO NAME PRINTED ON BALLOT; APPOINTED JUDGE OF RECORDER'S COURT CANDIDATE FOR JUSTICE OF THE PEACE

26 April 1954

Under G. S. 163-151 a married woman cannot have her name printed on the ballot in the name of her husband with the prefix "Mrs."

A judge of a municipal recorder's court can be a candidate for a justice of the peace.

DRAINAGE DISTRICTS; COLLECTION OF DRAINAGE TAX;
SHERIFF'S FEES THEREFOR

27 April 1954

G. S. 156-113 allows the sheriff or tax collector 2% of the amount collected for collecting the drainage tax described therein.

PRIMARIES; ELECTIONS; NOTICE OF CANDIDACY; SIGNATURE BY CANDIDATE

27 April 1954

A notice of candidacy must be filed and acknowledged by the candidate personally before the chairman or secretary of the board of elections with which the notice is filed, or acknowledged before an officer authorized to administer oaths. The notice of candidacy cannot be signed by an agent on behalf of a candidate and, if so signed, is void.

AD VALOREM TAXATION; PERSONAL PROPERTY; TRUCKS; TAX SITUS WHEN
USED IN CITY OR KEPT IN CITY

28 April 1954

A truck must be listed for ad valorem taxation at the residence of the owner unless the facts of the case bring such property within the exceptions set forth in G. S. 105-302 (4), which exception provides that personal property shall be listed for ad valorem taxation at the place where it is situated, rather than at the residence of the owner, "if the owner or person having control thereof hires or occupies a store, mill, dockyard, piling ground, place for the sale of property, shop, office, mine, farm, place for storage, manufactory or warehouse therein for use in connection with such property."

SANITARY DISTRICTS; ELECTION OF MEMBERS OF SANITARY DISTRICT BOARDS

28 April 1954

Where there are only six candidates for nomination to fill a sanitary district board consisting of three members, it is not necessary that a primary election be held.

CRIMINAL LAW; CARRYING WEAPONS; ACT OF STATE POLICE OFFICER

29 April 1954

A police officer of another state or political subdivision thereof cannot carry a concealed weapon in North Carolina.

INTOXICATING LIQUOR; TRANSPORTATION OF TAX-PAID LIQUOR IN EXCESS OF
ONE GALLON IN ABC TERRITORY

29 April 1954

Under the case of STATE v. WELCH, 232 N. C. 77 the driver of an automobile is considered as transporting more than one gallon of whiskey no matter what the division of ownership may be as to the passengers in the car with him. Therefore, if the total amount of tax-paid liquor being transported is in excess of one gallon, it is a violation of G. S. 18-49.2 and G. S. 18-49.3.

COUNTIES; PURCHASE OF LAND AND ERECTION OF COUNTY OFFICE BUILDING;
ABC FUNDS; SUPPLEMENTAL APPROPRIATION

29 April 1954

A county can make a supplemental appropriation after the regular annual appropriation has been made and expend surplus ABC funds for the purchase of land for necessary office buildings and other necessary public buildings.

AD VALOREM TAXATION; COLLECTION AND FORECLOSURE; SAME TRACT
FORECLOSED TWICE; DISPUTE AS TO OWNERSHIP

3 May 1954

Under the facts presented in this case where the same piece of property was erroneously sold twice to cover taxes for the same years because of uncertainty as to ownership, no refund should be made until the question of ownership is properly determined.

MUNICIPALITIES; EMPLOYEES; PAYMENT OF OVERTIME ON SALARIES
OF EMPLOYEES

3 May 1954

A regular salaried municipal employee is not entitled to overtime unless there is an express agreement to compensate such employee for the same. No implied agreement would arise to pay for such overtime services.

MUNICIPAL ELECTIONS; BOARD OF TOWN COMMISSIONERS; HOW
ELECTION DETERMINED

5 May 1954

In a municipal election under the general election law, the persons receiving the highest number of votes for members of the Board of Commissioners of a town are entitled to be declared elected to such position. No provision is made for run-off election. In case of a tie, the election is determined by lot.

PUBLIC HEALTH; SANITARY DISTRICTS; ELECTION AND QUALIFICATIONS;
MEMBERS OF SANITARY DISTRICT BOARD

5 May 1954

It is not required that a candidate for a member of the Board of a Sanitary District be a freeholder. He is only required to be a resident of the District and an elector as is required of any other officer.

ELECTORS; DISQUALIFICATION BY CONVICTION OF A FELONY

5 May 1954

The commission of a felony, punishable by imprisonment in the State's Prison, disqualifies a person from voting unless the citizenship of such person is restored as provided by law.

QUERY: Would conviction in another State exclude a person from holding office in North Carolina? This question has not been answered by the Supreme Court.

AD VALOREM TAXATION; REAL PROPERTY; DOUBLE LISTING; REFUNDS

6 May 1954

Under the circumstances set out in G. S. 105-405.1, certain ad valorem property tax refunds may be made to correct certain mistakes not more than two years old.

INSURANCE OF PUBLIC PROPERTY IN MUTUAL INSURANCE COMPANIES

6 May 1954

Public property may be insured in mutual insurance companies. See FULLER v. LOCKHART, 209 N. C. 61.

OLD AGE ASSISTANCE; REMISSION OF DEBT AND LIEN ON ESTATE OF
DECEASED RECIPIENT BY COUNTY COMMISSIONERS

5 May 1954

County Commissioners do not have authority to relieve the estate of an old age assistance recipient from the obligation to repay the benefits received during her life by the deceased recipient.

ELECTION LAWS; CANDIDATES MAY WITHDRAW BUT ARE NOT PERMITTED TO
RETURN OF FILING FEES

6 May 1954

A candidate for public office may withdraw his name as a candidate at any time but is not entitled to a return of his filing fees.

MUNICIPALITIES; TAXICABS; FAILURE TO PAY FARE

7 May 1954

Unless otherwise restricted in its charter, a city may make it a criminal offense for a person to engage a taxicab with intent to defraud the operator by refusing to pay his lawful charge.

MUNICIPALITIES; ORDINANCES REGULATING THE KILLING, MUZZLING AND
IMPOUNDING OF DOGS

7 May 1954

The case of STATE v. CLIFTON, 152 N. C. 800, would permit a municipality to enact an ordinance requiring the muzzling of dogs and authorizing the police of the city to kill dogs found running at large, unimpounded, but the adoption of such ordinance might be criticized from a humane standpoint.

MUNICIPALITIES; BOND ISSUES; SUCCESSIVE PROCEEDINGS

7 May 1954

The municipal finance act does not place but one limitation on the time upon which bond issues may be submitted to a vote of the people, which one limitation is that it cannot be voted on at a special election one month before or after the holding of a general election. If a bond issue has been voted down in a special election, the proceedings for issuance of bonds can be begun again but must be entirely new proceedings in compliance with the municipal finance act.

RIGHT TO WORK STATUTE; EFFECT ON REQUIRING OF LICENSE FOR LAWYERS, DOCTORS, ETC.

11 May 1954

The right-to-work statute, G. S. 95-78 et seq, has no application to the licensing of lawyers, doctors and other professions licensed under the laws of this State.

GENERAL ADMINISTRATION; LIEN ON REALTY; CERTIFICATE OF TAX LIABILITY

11 May 1954

The homestead exemption may not be claimed in the case of the sale of real property for taxes because Article X, Section 2, of the Constitution, which grants the exemption generally, specifically provides that no property shall be exempt from a sale for taxes.

CRIMINAL LAW; FIRST AND SECOND DEGREE BURGLARY; PUNISHMENT

12 May 1954

A person convicted of first degree burglary may be punished by a sentence of death, or by imprisonment for life in the State's Prison if the jury should so recommend. Any person convicted of burglary in the second degree may be sentenced to life imprisonment, or for a term of years, in the discretion of the court.

SCHOOLS; EXCLUSION OF PUPILS ON ACCOUNT OF MARRIAGE, ETC.

12 May 1954

A child within school age cannot be excluded from the public schools entirely on account of being married. Marriage would be the cause of exclusion only if the principal determines that attendance of such child would be a menace to the school.

A girl who is an unwed mother could be excluded from school for this reason if the principal finds that she is a menace to the school but, in

some cases, there might be extenuating circumstances which would not necessitate the exclusion of such a girl.

JUSTICES OF THE PEACE; SETTING UP OFFICES OUTSIDE OF TOWNSHIP

13 May 1954

Justices of the peace have limited county-wide jurisdiction. The statute, G. S. 7-127, provides that they may not be compelled to sit and hear causes outside of the township in which they are elected. No statutory limitation is placed upon the extent to which a justice of the peace may hear causes outside of the township from which he is elected. A case may be removed by a justice of the peace to an adjoining township when there is no justice of the peace in the township of the justice from which the case is removed.

SALARIES AND FEES; SALARY OF SOLICITOR OF CITY RECORDER'S COURT MAY NOT BE INCREASED OR DECREASED DURING TERM OF OFFICE

13 May 1954

In the absence of statutory authority, a city council may not provide for office expense of the prosecuting attorney of a municipal recorder's court.

MOTOR VEHICLES; MOTOR VEHICLE SAFETY AND FINANCIAL RESPONSIBILITY ACT OF 1953; RELEASES AS ESTOPPLES

14 May 1954

In order for a release given by one party to an accident to constitute an estoppel of the party released to sue the releasor for purposes of the Motor Vehicle Safety and Financial Responsibility Act of 1953, the release should show that it embodies a compromise settlement of all matters in controversy between the parties to the accident.

LICENSE TAXES; JUNK DEALERS; DEALERS SELLING ONLY TO LICENSED DEALERS; SECTION 168

14 May 1954

A junk dealer who does not have an established place of business in this State and who sells only to a licensed junk dealer or manufacturer in this State would not have to secure a State license with respect to each city and county in which he operates and would not have to secure local city and county licenses.

BANKS; INCREASE OF CAPITAL STOCK; AUTHORIZATION OF DIRECTORS AND STOCKHOLDERS REQUIRED

17 May 1954

A banking corporation may increase its capital stock and issue a stock dividend, provided the issuance of the stock dividend does not reduce the

surplus to less than 50% of the outstanding capital, and provided the same is approved by two-thirds vote of the stockholders holding the type of stock involved in such stock increase.

PRIMARY ELECTIONS; COUNTING BALLOTS; RIGHT OF ELECTORS TO SEE HOW
BALLOTS MARKED

17 May 1954

When the polls are closed, the primary ballot boxes shall be opened in the presence of the registrars and both judges of election and such electors as may desire to be present, but the registrars and judges may fix such space as they may deem reasonable and necessary to enable them to count the ballots.

JUDGMENT ABSOLUTE FORFEITING BOND; DOCKETING OF JUDGMENT OTHER
THAN IN COUNTY WHERE RENDERED; PAYMENT OF FEE FOR
DOCKETING JUDGMENT

17 May 1954

1. No execution may issue from the Superior Court upon any judgment until such judgment shall be docketed in the county to which the execution is to be issued.
2. Where the Clerk of the Superior Court requests the Clerk of the Superior Court in another county to docket and cross-index a judgment in that county the fees for docketing need not be paid in advance but shall be paid by the county commissioners out of county funds.

LICENSE TAX; SECTION 139; DRY CLEANERS; MUNICIPAL TAXES WHERE
PLANT OUTSIDE CITY

18 May 1954

When a dry cleaning plant is located out of the city but solicits business within the city, the city may levy a license tax at the same rate levied upon the dry cleaning plants in the city, but not at a higher rate.

MOTOR VEHICLES; OVERLOADING LIGHT TRAFFIC HIGHWAY

19 May 1954

The proviso in G. S. 20-116 (h) permitting the operation over a restricted highway of a vehicle loaded beyond the limits for such highway when the destination can be reached only by such highway, does not apply to the operation of a vehicle so loaded when the point of origin is on the restricted highway.

COURTS; GENERAL COUNTY; AUTHORITY TO ISSUE WRITS OF HABEAS CORPUS

19 May 1954

Under the provisions of G. S. 17-6, G. S. 7-278 and G. S. 7-279, it is very doubtful that a General County Court in this State has the authority

to issue the writ of habeas corpus. IN RE SCHENCK, 74 N. C. 607; JONES v. OIL COMPANY, 202 N. C. 328, and INVESTMENT COMPANY v. PICKELSIMER, 210 N. C. 541. Article IV, Section 2 of the State Constitution; Article IV, Section 12 of the Constitution; 25 Am. Juris., Sections 109 and 110.

ELECTION OF COUNTY ABC BOARD MEMBERS

20 May 1954

In the election of a county board of alcoholic control, under the provisions of G. S. 18-41, at a joint meeting of the board of county commissioners, the county board of health, and the county board of education of a county, members of these respective boards may not vote by proxy. Each member must be present in order to cast a vote.

SALES TAX; BOOK AND MAGAZINE MAIL ORDER BUSINESS

21 May 1954

A book and magazine mail order business is subject to the payment of the 3% sales tax on sales within the state.

CRIMINAL LAW; MOTOR VEHICLES; SPEEDING; NECESSITY FOR WARRANTS TO CHARGE SPEED ALLEGED, NECESSITY FOR JURY TO FIND

21 May 1954

When a defendant is charged with exceeding the speed limit, the warrant should charge that he exceeded a stated limit, such as "exceeding 75 miles per hour," "exceeding 70 miles per hour," or "exceeding 55 miles per hour." If the defendant requests a jury trial, the jury should rule on the extent of the excessive speed in language similar to that of the warrant.

MUNICIPAL CORPORATIONS; AUTHORITY FOR FIRE DEPARTMENT TO RESPOND TO FIRES OUTSIDE TOWN LIMITS

21 May 1954

Under G. S. 160-238, the governing body of a municipality may provide for protection against fire of property outside the corporate limits, and within such area as the governing body may determine, not exceeding a boundary of two miles from the corporate limits, under such terms and conditions as the governing body may prescribe. The governing body is also authorized to agree to furnish and to furnish protection against fire of property within an area of not more than twelve miles from the corporate limits, upon such terms as the governing body may determine.

DIVORCE LAWS; GROUNDS FOR DIVORCE

21 May 1954

The fact that a married woman has had an operation which would prevent her from having children would not be grounds for divorce in this State.

DIVORCE LAWS; WAITING PERIOD BEFORE REMARRIAGE

24 May 1954

There is no waiting period which must elapse after the granting of an absolute divorce in this State before the parties to a marriage may remarry.

AD VALOREM TAXES; SPECIAL PURPOSES; APPROVAL OF GENERAL ASSEMBLY;
FARM AND HOME AGENT FUND

24 May 1954

The provisions of G. S. 153-9 (35), which authorizes the county commissioners of each county, to cooperate with the State and national departments of agriculture to promote the farmers cooperative demonstration work, and to appropriate such sum as they may agree upon for the purpose, does not authorize the levy of a special tax therefor.

NORTH CAROLINA BOARD OF NURSE REGISTRATION AND NURSING EDUCATION;
RULES AND REGULATIONS; MINIMUM STANDARDS FOR ACCREDITED
NURSING SCHOOLS; POWERS OF ADMINISTRATIVE BOARDS

24 May 1954

The North Carolina Board of Nurse Registration and Nursing Education has authority to make rules and regulations to implement and carry out the provisions of Article 9 of Chapter 90 of the General Statutes relating to the accreditation of nursing schools so long as such rules and regulations fill in or conform to standards and objectives authorized by the nursing statute. It does not have authority under the guise of rules and regulations to require standards or conditions of accreditation as applied to nursing schools not authorized by the statute and for which no statutory standard is given. The Board is further authorized to define terms and construe the Act and to set up minimum standards and criteria for the purpose of translating these definitions or constructions into practice, but such definitions and standards are not final or conclusive and must be reasonable and not arbitrary or capricious, and such constructions are not binding upon the courts.

ADOPTION; SERVICE OF PROCESS BY PUBLICATION OF SUMMONS IN CASE
OF ABANDONMENT BY PARENT

25 May 1954

Service of process in an adoption proceeding may be had on a father who has willfully abandoned his child by publication of summons as provided in G. S. 48-7, Subsections (b) and (c), and the Clerk of Superior Court having jurisdiction of the proceeding may determine if an abandonment actually exists, and upon a finding of fact of abandonment by the Clerk, consent to the adoption may be given as provided in G. S. 48-9, Subsection 2. Abandonment for purposes of the adoption law is defined in G. S. 48-2, Subsection 3.

MOTOR VEHICLES; MUNICIPAL REGULATIONS; RULES OF THE ROAD; SPEEDING
RESTRICTIONS; AMBULANCES; POWER OF LOCAL AUTHORITIES

26 May 1954

The speed limits fixed by the Motor Vehicles Laws do not apply to a public or private ambulance traveling in emergency. If a municipality establishes a speed limit for streets which are not part of the State Highway system, such limitation applies to ambulances unless the ordinance provides otherwise.

LICENSE TAXES; TOBACCO RETAILERS AND JOBBERS; MANUFACTURERS
NOT INCLUDED; SECTION 149

26 May 1954

A tobacco manufacturing company selling only to retailers would not be subject to a license tax imposed only on retailers and jobbers.

CEMETERIES; PERPETUAL CARE; ARTICLE 7 OF CHAPTER 65 OF THE
GENERAL STATUTES

26 May 1954

A church owning a parcel of land and operating the same as a cemetery is not subject to the provisions of Article 7 of Chapter 65 of the General Statutes dealing with perpetual care of cemeteries, since the church does not offer perpetual care and is not operating the cemetery for private gain.

CRIMINAL PROCEDURE; TRIAL; PROSECUTING ATTORNEY;
PRIVATE PROSECUTION

27 May 1954

Under many decisions of our Court, the solicitor or prosecuting attorney for the State has the control and management of the trial of criminal cases.

PUBLIC WELFARE; OLD AGE ASSISTANCE RECIPIENT WHO MOVES
FROM ONE COUNTY TO ANOTHER

28 May 1954

An old age assistance recipient who receives assistance as defined in G. S. 108-19 in County A and moves to County B in this state shall be entitled to receive assistance from County A for a period of three months following such removal and thereafter assistance shall be paid by County B, the county to which such recipient has moved. See G. S. 108-35.

LEGAL ETHICS; SOLICITOR OF RECORDER'S COURT; APPEARANCE IN CIVIL
ACTION GROWING OUT OF AUTOMOBILE WRECK SUBJECT TO
PROSECUTION IN SUCH COURT

28 May 1954

Under the Canons of Legal Ethics, a prosecuting attorney in a county recorder's court could not appear in any civil or criminal matter growing out of any thing which is or may have been in any way connected with the office of the prosecuting attorney during his incumbency.

SEARCH WARRANTS; JOHN DOE SEARCH WARRANTS

28 May 1954

Where the name of a person is unknown and such person is violating the law in regard to the sale of illegal liquor, a search warrant can be procured by the officers reciting that the name of such person is unknown and giving a reasonable description of such person, as well as a reasonably good description of the premises, and it is believed that this will be a valid search warrant.

EXTRADITION; UNIFORM EXTRADITION ACT; BAIL

28 May 1954

In the Uniform Extradition Act an alleged fugitive can be extradited from the asylum state to the demanding state for a misdemeanor or any crime whatsoever. It is thought that it is a rule of almost general application that the surety on a bail bond in a criminal case has a right to go into another state with a certified copy of the bail bond, judgment of forfeiture, etc. and return a defendant-principal to this State for production into court without the use of extradition proceedings.

PARKS AND PLAYGROUNDS; APPROPRIATION OF NONTAX FUNDS IN
ADDITION TO TAX LEVY

28 May 1954

A municipality may appropriate, from nontax funds, additional amounts for its recreational program in addition to the funds voted to authorize property tax levies for this purpose. The limitation of property taxes would not be applicable to such additional appropriation as the municipality saw fit to make from nontax sources.

(1) AD VALOREM TAXATION; GARNISHMENT; COSTS

(2) GARNISHMENT; AD VALOREM TAXES; COSTS

31 May 1954

The fee schedule set out in G. S. 105-385 would be applicable to a justice of the peace in the case of a tax garnishment proceeding unless some local

law varies such fees, not in general, but specifically with reference to tax garnishment proceedings.

PUBLIC LIBRARIES; MEANING OF NONTAX FUNDS; NONTAX REVENUE;
G. S. 160-65

2 June 1954

Revenues from license taxes are not nontax revenue within the meaning of the statute authorizing expenditure of nontax revenues for the support of public libraries. Charges for use of sewerage system may not be used for the support of a public library.

MUNICIPALITIES; CONSTRUCTION OR REPAIR WORK OR PURCHASE OF
MATERIALS AS CONTEMPLATED BY G. S. 143-129

2 June 1954

It is thought that the language of G. S. 143-129 does not include services rendered in making a study at a "Job Classification System."

ELECTION LAWS; WHEN RESULTS DETERMINED BY PLURALITY AND
MAJORITY; SECOND PRIMARIES

2 June 1954

Where candidates for all the offices within a group do not receive a majority of votes cast, those candidates equal in number to the positions to be filled and having the highest number of votes shall be declared nominated unless a second primary shall be demanded. A second primary may be demanded by any one or all of the candidates equal in number to the positions remaining to be filled and having the second highest number of votes.

AD VALOREM TAXES; TAX SALE CERTIFICATE; TAX RECEIPT

3 June 1954

When a person pays delinquent taxes and he is issued a copy of the tax sale certificate "marked paid," it is preferable also to issue to him the original tax receipt.

GUARDIANS; MINORS; DOMICILE OF ORPHAN

3 June 1954

Upon authority of *IN RE HALL*, 235 N. C. 697, it is thought that when both of the parents of an infant have died and a married sister of the infant takes the child into her home, as a member of the family, the child takes the domicile of his sister with whom he lives. This situation is to be distinguished from that discussed in *DUKE v. JOHNSTON*, 211 N. C. 171. See also G. S. 33-1, G. S. 33-3, G. S. 33-6, 17 Am. Juris., Section 64, page 629.

REGISTER OF DEEDS; RECORDING OF INSTRUMENTS; PRINTING OR TYPING
THE WORD "SEAL" ON PUBLIC RECORDS

4 June 1954

In recording deeds, deeds of trust, and other instruments, the register of deeds may have the word "seal" printed on his forms or he may have the word "seal" typed or written in by hand by personnel in his office.

AD VALOREM TAXES; PERSONAL PROPERTY; LIENS; MORTGAGES;
PRIORITY OF LIENS

4 June 1954

A property tax lien, when it attaches to personal property, shall, in so far as it represents taxes assessed against the property to which it attaches, be superior to all other liens and rights, whether such other liens and rights are prior or subsequent to the tax lien in point of time. In so far as said tax lien represents taxes not assessed against such property, said tax lien on personal property shall be inferior to prior valid liens and superior to all subsequent liens.

LICENSE TAXES; COIN OPERATED DRINK DISPENSING MACHINES;
SECTION 130½

4 June 1954

A person who maintains and operates five or more coin-operated drink dispensing machines in places of business not operated by him is liable for a license tax of \$100.00 as a distributor or operator and an additional tax of \$15.00 per dispensing machine.

INTOXICATING LIQUOR; ABC ACT; WINE AND BEER; TIME FOR
HOLDING ELECTIONS

4 June 1954

Elections on the question of the establishment of ABC Stores and on the question of the sale of wine and beer may not be held on the same date.

Separate petitions are required for the calling of an election for the establishment of ABC Stores and for the calling of an election on the question of the sale of wine and beer.

MUNICIPALITIES; MUTUAL ASSISTANCE PACT FOR FIRE PROTECTION

7 June 1954

If municipalities are within twelve miles of each other they may enter a mutual assistance pact by which the fire departments of each town could be called upon to go to either of the adjacent towns for the purpose of fighting fires. G. S. 160-238.

MOTOR VEHICLES; TITLE AND REGISTRATION

8 June 1954

A resident owner of a truck designed to be operated, and operated, over the highways of North Carolina must procure the registration of the truck in North Carolina and North Carolina plates therefor. It is immaterial that the resident owner has leased the truck to a nonresident who makes no pick-ups or deliveries in North Carolina when driving into or through the State. It is also immaterial that the truck is licensed in another State.

DOUBLE OFFICE HOLDING; PROSECUTING ATTORNEY OF COUNTY
RECORDER'S COURT AND MAYOR

8 June 1954

It is thought that a prosecuting attorney of a county recorder's court is a public officer within the contemplation of Article XIV, Section 7 of the State Constitution. Therefore it is thought that a person may not legally hold this office and at the same time serve as mayor of a municipality in this State. G. S. 7-235; G. S. 128-16; Article 2, Chapter 128 of the General Statutes; EDWARDS v. BOARD OF EDUCATION, 235 N. C. 345; ATKINS v. FORTNER, 236 N. C. 264; Foard v. Hall, 111 N. C. 369; BARNHILL v. THOMPSON, 122 N. C. 493; RHODES v. LOVE, 153 N. C. 468; STATE PRISON v. DAY, 124 N. C. 362; STATE v. HAMME, 180 N. C. 684.

SALES TAX; USE TAX; COTTON GIN MACHINERY

9 June 1954

A sale of cotton gin machinery by a manufacturer in another state to a North Carolina plant, title passing and delivery being made before the goods reach North Carolina, is not subject to a sales tax in North Carolina. Since such a sale in North Carolina would be classified as a wholesale sale, no use tax is levied upon the use of such machinery.

INCOME TAX; COMPENSATION FOR SERVICES; HONORARIUM

9 June 1954

When a person of long experience in trust administration and education is requested by an educational institution to assist it in establishing, organizing, and getting into operation a graduate school of banking and trust administration, and pursuant to such request over a period of several months travels to the institution and spends at different times several weeks there advising its officers, assisting in the planning of the curriculum, the recruitment of a faculty, and in the actual instruction of students, an honorarium of a substantial sum of money paid to him in addition to his traveling expenses is compensation for personal services and reportable as gross income even though there was no contract for such payment and no expectation of such payment by the person rendering such services.

MUNICIPAL CORPORATIONS; POLICEMEN; JURISDICTION

9 June 1954

Even though the mayor of a town has criminal jurisdiction concurrent with the jurisdiction of a justice of the peace of any offense committed within one-half mile beyond the corporate limits of a town, this does not mean that policemen of a town are clothed with the power of arrest beyond the corporate limits. This power may not be implied from the power granted to the mayor in such cases.

ADMINISTRATORS; PAYMENT OF COSTS OF ADMINISTRATION AND COMMISSIONS OF ADMINISTRATOR FROM RECOVERY IN WRONGFUL DEATH ACTION

9 June 1954

The costs of administration and the commissions of the administrator may be paid from the recovery in a wrongful death action. *Baker v. R. R.*, 91 N. C. 310. *Tieffenbrun v. Flannery*, 198 N. C. 397, 401.

PUBLIC WELFARE; AID TO DEPENDENT CHILDREN; DEFINITION OF STEPMOTHER

10 June 1954

Stepfather is defined in the case of *Owens v. Munden*, 168 N. C. 266, as "the husband of one's mother who is not one's father." Conversely, stepmother would be defined as "the wife of one's father who is not one's mother." The wife of a man who is the father of illegitimate children by another woman would not have the relationship of stepmother to said children in the absence of some adjudication of paternity or legitimation of the children.

OLD AGE ASSISTANCE LIEN; PROCEEDING BY CITY TO CONDEMN PROPERTY COVERED BY LIEN

10 June 1954

Where an old age assistance lien has been filed against property pursuant to G. S. 108-30.1 and a city wishes to acquire title to a portion of it in order to open a city street, the city should institute condemnation proceedings as set out in G. S. 160-205 et seq. and Chapter 40 of the General Statutes.

MAYORS' COURTS; JURISDICTION; REMOVAL OF CASE TO A JUSTICE OF THE PEACE

10 June 1954

The provisions of G. S. 7-147, which provide that trials may be removed from one justice of the peace to another, are not applicable to mayors' courts. In the case of *STATE v. JOYNER*, 127 N. C. 541, our Court held

that the provisions of this section apply only to courts of justices of the peace, and in a prosecution for a violation of a town ordinance before a mayor, the defendant was not entitled to a removal.

LICENSE TAXES; PROCESS TAX; PETITIONS UNDER FINANCIAL RESPONSIBILITY
ACT; SECTION 157 OF THE REVENUE ACT

11 June 1954

Persons filing petitions under G. S. 20-279.2 of the 1953 Financial Responsibility Act are not required to pay the process tax levied by Section 157 of the Revenue Act.

LICENSE TAXES; AUDITORIUM; OPERATION FOR LESS THAN THREE
DAYS PER WEEK; SECTION 105

11 June 1954

An auditorium which presents regularly scheduled moving picture shows and also presents on occasions glee club concerts and performances of student dramatic groups is not entitled to the relief provisions of subsection (d) of Section 105 of the Revenue Act.

COUNTIES; RIGHT TO PAY THE TRAVEL EXPENSE OF COUNTY SUPERINTENDENT
OF WELFARE ATTENDING TRAINING COURSES AT THE UNIVERSITY

11 June 1954

Under the doctrine of *GREENE v. KITCHIN*, a county may probably legally pay the cost of travel of its county superintendent of welfare attending a graduate course in social work at the University.

CRIMINAL LAW; SUSPENDED SENTENCE; CUMULATIVE SENTENCES

11 June 1954

Where a suspended sentence has been put into effect and the same person is convicted of a subsequent offense, the sentences can be made cumulative.

JUSTICES OF THE PEACE; JURISDICTION; CLAIM AND DELIVERY

11 June 1954

Under Article IV, Section 27 of the State Constitution justices of the peace have jurisdiction of civil actions founded on contract wherein the sum demanded shall not exceed \$200.00 and wherein the title to real estate shall not be in controversy. The same section provides that the General Assembly may give to justices of the peace jurisdiction of civil actions not founded on contract wherein the value of property in controversy does not exceed \$50.00. It is held that a proceeding in claim and delivery is a tort action. Therefore, if the value of the property exceeds

\$50.00 a justice of the peace does not have jurisdiction of the claim and delivery part of the proceeding although he does have jurisdiction of the contract part of the action when the sum demanded does not exceed \$200.00. G. S. 7-122 gives to justices of the peace this jurisdiction. See also KISER v. BLANTON, 123 N. C. 400; MARTIN v. McNEELY, 101 N. C. 634; GRIFFITH v. RICHMOND, 126 N. C. 377; NOVILLE v. DEW, 94 N. C. 43; and HARGROVE v. HARRIS, 116 N. C. 418.

MOTOR VEHICLES; MUNICIPAL CORPORATIONS; COURTS;
JURISDICTION OF MAYOR

14 June 1954

A mayor's court has jurisdiction of the offense of failing to stop at a stop sign and of the offense of speeding in violation of a city ordinance fixing a speed limit on the streets not part of the State Highway system and not maintained by the State Highway and Public Works Commission. A mayor's court does not have jurisdiction over the offense of speeding over streets which are part of the State highway system and are maintained by the State Highway and Public Works Commission. The jurisdiction of the mayor over the offense of passing a red light depends upon the penalty fixed by the city ordinance.

(1) AD VALOREM TAXATION; PERSONAL PROPERTY TAXES; NO LIEN ON
AFTER ACQUIRED REAL PROPERTY

(2) POLL TAXES; NO LIEN ON AFTER ACQUIRED REAL PROPERTY

15 June 1954

Poll taxes and personal property taxes for a particular year do not become a lien on real property acquired by the taxpayer subsequent to January 1st of the year in which the poll and personal property taxes were levied.

SALES TAX; EXEMPTION; BLIND AND PHYSICALLY HANDICAPPED MERCHANTS

15 June 1954

The sales made by a merchant who is blind or laboring under some other physical handicap are not exempt for that reason from the sales tax.

MOTOR VEHICLES; DECALS

16 June 1954

No decal or other nontransparent material may be placed upon the windshield or window of a motor vehicle operated on the highways of North Carolina unless the same has been approved by the Commissioner of Motor Vehicles.

MOTOR VEHICLES; OVERWEIGHT; HIGHWAY PATROL

16 June 1954

A member of the State Highway Patrol or a police officer may stop a vehicle suspected of being overweight and cause it to be weighed. This includes the right to forbid movement of the vehicle for such time as is reasonably necessary to weigh it, including a reasonable period for procuring the necessary scales.

ELECTIONS; ABSENTEE BALLOTS; EFFECT OF BEING SWORN TO BEFORE CLERK
SUPERIOR COURT WHO IS CANDIDATE IN THE ELECTION

16 June 1954

The administering of oaths by the clerk of the superior court on absentee ballots voted in an election in which he is a candidate would not invalidate the ballots, as the clerk's acts are administerial and not judicial. OWENS v. CHAPLIN, 228 N. C. 705.

ELECTION OF SCHOOL PRINCIPALS

16 June 1954

Local school committees are not required to hold public meetings for the election of school principals and are not required to record their votes in meetings held for this purpose, but have a right to do so if they see fit. They have a right to have executive sessions if deemed necessary. There is no statute which requires them to hold open meetings.

MUNICIPAL CORPORATIONS; CARE OF CEMETERIES; CEMETERY CARE FUNDS

16 June 1954

Cemetery care funds established under G. S. 160-258 may not be transferred to the general expense fund of a municipality. G. S. 160-259 specifically provides for the application of such funds for the purposes therein stated and also provides that such funds shall be kept separate and shall not be used for any other purpose or by the city in its other affairs.

ADOPTION; RESIDENCY REQUIREMENTS OF G. S. 48-4(c)

18 June 1954

A person, after meeting the residency requirements of the adoption law, would not then lose the same by being sent overseas in the Armed Forces, it being his intention to return to this state and continue his former residence, and when he does in fact return and resume his residence in this state.

AD VALOREM TAXATION; PERSONAL PROPERTY; OCEAN-GOING VESSELS

18 June 1954

Ocean-going vessels are not subject to any special ad valorem property tax exemption merely because such vessels are ocean-going.

COUNTY VETERANS SERVICE OFFICER; NO REQUIREMENT THAT
SERVICE OFFICER BE A VETERAN

18 June 1954

A county veterans service officer appointed under authority of G. S. 165-6 is not required by law to be a veteran.

MORTGAGES; ASSIGNMENT OF CHATTEL MORTGAGE; CANCELLATION

22 June 1954

G. S. 45-37(2) authorizes the Register of Deeds to cancel a mortgage when the instrument accompanied by the bond or note is presented to him with the endorsement of payment and satisfaction appearing thereon by the payee, mortgagee or assignee. There seems to be no statute stipulating whether the assignment of a chattel mortgage must be on the instrument itself or whether it may be by a separate instrument. It would seem that the assignment may be made either upon the mortgage itself or by a separate instrument. *BANK v. SAULS*, 183 N. C. 165 and *WEIL v. DAVIS*, 168 N. C. 298.

MARRIAGE LAWS; MARRIAGE BETWEEN A WHITE PERSON AND A
JAPANESE NATIONAL; MARRIAGE BETWEEN A NEGRO
AND A JAPANESE NATIONAL

23 June 1954

There is no legal prohibition against the marriage of a white person and a Japanese National; neither is there any prohibition against the marriage of a Negro and a Japanese National. If a marriage ceremony is legally performed in a foreign state, it will be recognized in this State.

ELECTIONS; MUNICIPAL ELECTION FOR ANNEXATION OF TERRITORY; NO
PERIOD OF TIME BEFORE OF AFTER OTHER ELECTIONS IN
WHICH ELECTION CAN BE HELD

23 June 1954

When an election is to be held for the purpose of extending the corporate limits of a municipality under Article 36 of Chapter 160 of the General Statutes, there is no period of time necessary to elapse before, after or between any primary or second primary or other election.

SCHOOLS; AUTHORITY OF COUNTY BOARD OF EDUCATION TO CREATE AN
OBLIGATION FOR THE PURCHASE OF PROPERTY TO BE USED FOR
SCHOOL PURPOSES

24 June 1954

There seems to be no statute authorizing a county board of education to purchase property and execute purchase money notes and deeds of trust to secure a balance of the purchase price. It is thought that the General Assembly has the authority to authorize such a transaction by a local act. VAUGHN v. COMMISSIONERS, 118 N. C. 636.

COUNTIES; INVESTMENT OF PROCEEDS OF BOND ISSUE

24 June 1954

G. S. 159-49.1 authorizes the temporary investment of unused proceeds of the sale of bonds by counties or municipalities in U. S. Government Bonds or bonds or notes, the payment of which is guaranteed by the United States, or in bonds or notes of the State of North Carolina or in bonds of any county, city or town of North Carolina which have been approved by the Local Government Commission for the purpose of such investment. There seems to be no reason why a county may not, under such circumstances, invest in its own bonds.

ELECTIONS; REGISTRATION; VOTERS' QUALIFICATIONS PREVIOUSLY
PASSED UPON

24 June 1954

Where a voter has been passed upon by a registrar as to his qualifications and has been registered, another registrar cannot subsequently re-examine the voter's qualifications in absence of a proper challenge either made on challenge day or when the voter offers to vote.

MUNICIPAL CORPORATIONS; SALARY OF CITY COUNCIL UNDER PLAN D

24 June 1954

The salaries of city councilmen under Plan D form of government may be increased to an amount not exceeding \$600.00 a year for each member, but no increase shall become effective during the year in which the increase is voted.

MUNICIPAL CORPORATIONS; TEMPORARY ABSENCE OF MAYOR; APPOINTMENT
OF MAYOR PRO TEM

24 June 1954

Under the general municipal law, in the event of the absence of a mayor, the board of commissioners may appoint one of their number mayor pro tem to exercise the duties of mayor.

INCOME TAXES; GROSS INCOME; POSTAL EMPLOYEES

25 June 1954

A North Carolina resident receiving compensation within North Carolina from the United States Post Office Department for services rendered such Department in North Carolina is subject to the Income Tax on such wages.

ADOPTION; G. S. 48-9, SUBSECTION (d); CONSENT WHEN MOTHER IS
MENTALLY INCOMPETENT

25 June 1954

If a court finds as a fact that the mother of an illegitimate child has been adjudged mentally incompetent, then a next friend may be appointed by the court to give or withhold consent for the adoption of the child pursuant to the provisions of G. S. 48-9, Subsection (d).

SALES TAXES; EXEMPTIONS; SALES TO EDUCATIONAL INSTITUTIONS

25 June 1954

Sales of tangible personal property to educational institutions not operated for profit are exempt from the sales tax.

MUNICIPAL ORDINANCES; LICENSE TAXES; NEED FOR ANNUAL LEVY

25 June 1954

A Privilege Tax Ordinance adopted under the authority of G. S. 160-56 does not have a continuing effect and must be re-enacted each year.

MUNICIPAL ORDINANCES; PROHIBITION OF BUSINESS; RENTING OF
MOTOR SCOOTERS

25 June 1954

The Town of Carolina Beach has no authority to prohibit the operation of a business engaged in renting motor scooters and has no authority to prohibit the operation of motor scooters within the Town limits.

MOTOR VEHICLES; DRIVER'S LICENSE; POLICE OFFICERS;
EXHIBITION OF LICENSE

28 June 1954

It is not a criminal offense for a person in charge of an automobile to refuse to exhibit his driver's license to an officer not in uniform where the vehicle has not been involved in an accident. It is not a criminal offense to resist an unlawful arrest.

ELECTION LAWS; FILING FEES; JUSTICES OF THE PEACE

28 June 1954

A justice of the peace is not permitted to deduct the expenses of running his office in calculating the amount of filing fee he is required to pay in order to participate in a primary election.

SCHOOLS; SALE OF PERSONAL PROPERTY

28 June 1954

Under the provisions of G. S. 115-86, as amended by Chapter 153, Session Laws of 1953, personal property which has become unnecessary for public school purposes may be sold at private sale only after the same has been advertised for sale at public auction as required by this section and all bids rejected by the Board as being inadequate.

SCHOOLS; AUTHORITY TO PERMIT USE OF SCHOOL PROPERTY FOR OTHER THAN SCHOOL PURPOSES; USE OF ACTIVITY SCHOOL BUSES

28 June 1954

Under the provisions of G. S. 115-95 and the decisions in SMITH v. HEFNER, 235 N. C. 1 and BONEY v. KINSTON GRADED SCHOOLS, 229 N. C. 136, it is thought that the Board of Trustees of a city administrative unit have authority to allow school property to be used as a site for miniature golf course, sponsored by a local civic organization provided the contract reserves for school purposes the primary use of the property. In other words, the lease to the civic organization must not interfere with the use of the property for school purposes and the lease should provide that it is to be terminated at any time the Board of Trustees finds that this particular part of the campus is needed for a school purpose.

Since the operation of a recreational program under Article 12, Chapter 160 of the General Statutes, is a city function as opposed to a school function, it is doubtful that the trustees of a city administrative unit have authority to allow the use of a school activity bus for the transportation of children in connection with the city recreation program. G. S. 115-45.1.

MARRIAGE LAWS; AUTHORITY TO PERFORM MARRIAGE CEREMONY; NO NECESSITY FOR OBTAINING A LICENSE TO PERFORM A MARRIAGE CEREMONY

30 June 1954

An ordained minister of the Gospel is authorized by law to perform a marriage ceremony. An ordained minister of the Gospel is not required to obtain a license authorizing him to perform marriage ceremonies in this State.

**REPORT OF THE DIRECTOR OF
THE BUREAU OF INVESTIGATION
TO THE
ATTORNEY GENERAL FOR THE BIENNIUM
JULY 1, 1952 TO JULY 1, 1954**

30 August '54

Honorable Harry McMullan
Attorney General
State of North Carolina
Raleigh, North Carolina

RE: BIENNIAL REPORT

Dear Mr. McMullan:

There is submitted herewith the Biennial Report for the State Bureau of Investigation covering the Fiscal Years 1952-1953 and 1953-1954.

Effective June 1, 1953 Mr. James F. Bradshaw, Jr. was promoted to the position of Assistant Director. Mr. George E. Canady was promoted to Supervising Agent for the Eastern District of North Carolina, replacing Mr. Bradshaw in that position. Mr. Guy L. Scott remained as Supervising Agent for the Western District. There have been several territorial changes among the Special Agents with the long-range view toward more effective coverage of the State and a more equitable distribution of the case load. The present staff of the Bureau totals thirty-three, including nineteen Special Agents, two supervising Agents, four Specialists, a Chief Clerk, and five Stenographers.

As of July 1, 1953 the Bureau assumed the new duties created by the 1953 General Assembly which established initial jurisdiction for this Bureau in the investigation of violations of the State Narcotic Act. Circumstances to date have prevented the assignment of more than one Special Agent to these duties but effective August 1, 1954 an additional Special Agent was assigned to narcotics investigations. In addition to numerous local investigations and arrests, the Bureau in cooperation with Federal narcotic agents, has been successful in breaking up two large narcotic rings within this State, both of which had national ramifications.

The requests for assistance of the Bureau have continued to show a steady increase. During the year 1952-1953 the Bureau engaged in 1,734 new investigations, an increase of 16.8 per cent over the preceding year, and for the year 1953-1954 engaged in 2,332 new investigations, an increase of 34.5 per cent over 1952-1953. This necessitated a total of 11,733 hours of overtime by the field Agents. Reduced to a standard eight hour day, this represents 1,470 working days or the equivalent of six years. This further represents an average of 587 hours overtime or 73 working days per field Agent.

While the toxicological, serological and biochemical work of the Bureau has heretofore been handled on contract basis, the increase in requests for analyses of this nature has clearly demonstrated the necessity for the

employment of a full time chemist for the Bureau. An appropriation will be requested in the next biennium to provide for this addition to the staff.

The 1953 General Assembly appointed a commission to study State government with regard to over-lapping functions, re-organization and consolidation of activities. The Institute of Government, Chapel Hill, was requested to make this survey and Mr. Richard Myren has recently completed a study of the North Carolina Department of Justice and State Bureau of Investigation. Based on figures compiled by him I have included herewith as a part of the Biennial Report, graphs demonstrating the increase in activity of the Bureau, case load per investigator, and the cost per investigation for each year since this Bureau began operating in 1938.

The State Bureau of Investigation has continued to receive very fine cooperation from the Sheriffs' Departments, Police Departments, Solicitors, Judges, Executive Departments of the State, and various other law enforcement agencies.

With kind personal regards,

Sincerely yours,

JAMES W. POWELL, *Director*

JWP:v

YEARLY REPORT

The following statement shows new and old cases investigated and closed for each month during the period from 1 July 1952 to 1 July 1953 and 1 July 1953 to 1 July 1954:

	1 July 1952 to 1 July 1953				1 July 1953 to 1 July 1954			
	NEW CASES		OLD CASES		NEW CASES		OLD CASES	
	Investigated	Closed	Investigated	Closed	Investigated	Closed	Investigated	Closed
July.....	100	60	131	72	169	85	103	63
August.....	144	99	98	61	143	51	108	78
September.....	160	108	106	33	171	86	118	70
October.....	96	62	99	12	208	74	220	107
November.....	158	91	81	29	227	84	142	51
December.....	147	72	65	20	174	48	147	71
January.....	152	85	104	40	244	76	164	48
February.....	171	88	102	63	201	87	160	73
March.....	197	81	102	12	172	59	177	92
April.....	100	33	144	32	147	60	102	76
May.....	140	43	126	59	217	115	176	120
June.....	169	119	102	78	259	142	143	63
TOTALS.....	1,734	941	1,260	511	2,332	967	1,760	912

1 July 1952 to 1 July 1953

The following shows source of requests and types of work for the Fiscal Year 1952-1953:

	Sheriffs' Depts.	Police Depts.	High- way Patrol	Solici- tors	Judges	Execu- tive Dept.	Cor- oners	Misc.	Totals
Assaults.....	31	7	6	4	—	—	1	—	49
Burglary.....	697	344	2	—	—	5	—	5	1053
Forgery.....	51	53	—	2	—	3	—	2	111
Homicide.....	54	9	2	8	—	1	4	1	79
Larceny.....	122	41	20	2	—	2	—	5	192
Robbery.....	19	5	—	1	—	—	—	—	25
Sex Offense.....	22	5	1	1	—	—	—	1	30
Miscellaneous.....	99	41	1	14	—	19	—	21	195
TOTALS.....	1,095	505	32	32	0	30	5	35	1,734

The following statement shows the source of requests and types of work performed by the Technical Division during the period from 1 July 1952-1953:

	Sheriffs' Depts.	Police Depts.	High- way Patrol	Solici- tors	Judges	Execu- tive Dept.	Cor- oners	Misc.	Totals
Fingerprint Examinations.....	1,273	593	54	—	—	—	—	207	2,127
Firearms Examinations.....	50	25	5	—	—	4	—	—	84
Document Examinations.....	216	273	—	14	—	451	—	85	1,039
Medico-Legal Examinations.....	21	10	—	—	—	—	—	—	31
Photographs Printed.....	588	434	29	—	—	38	—	366	1,455
Phychograph Tests.....	71	54	5	—	—	12	—	—	142
TOTALS.....	2,219	1,389	93	14	0	505	0	658	4,878

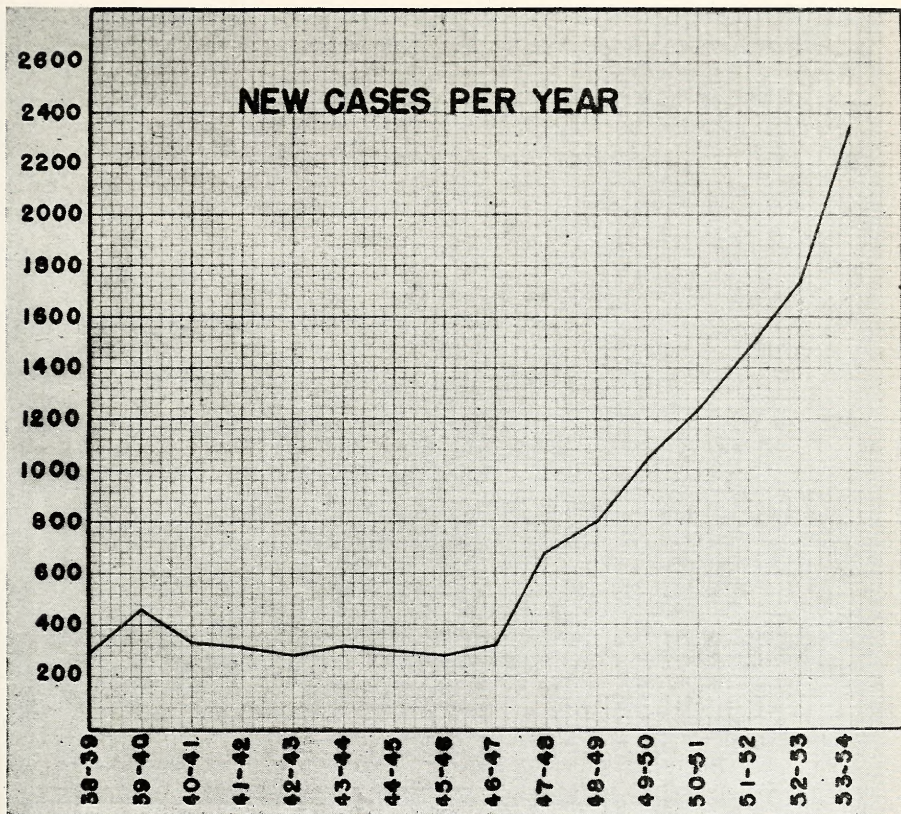
1 July 1953 to 1 July 1954

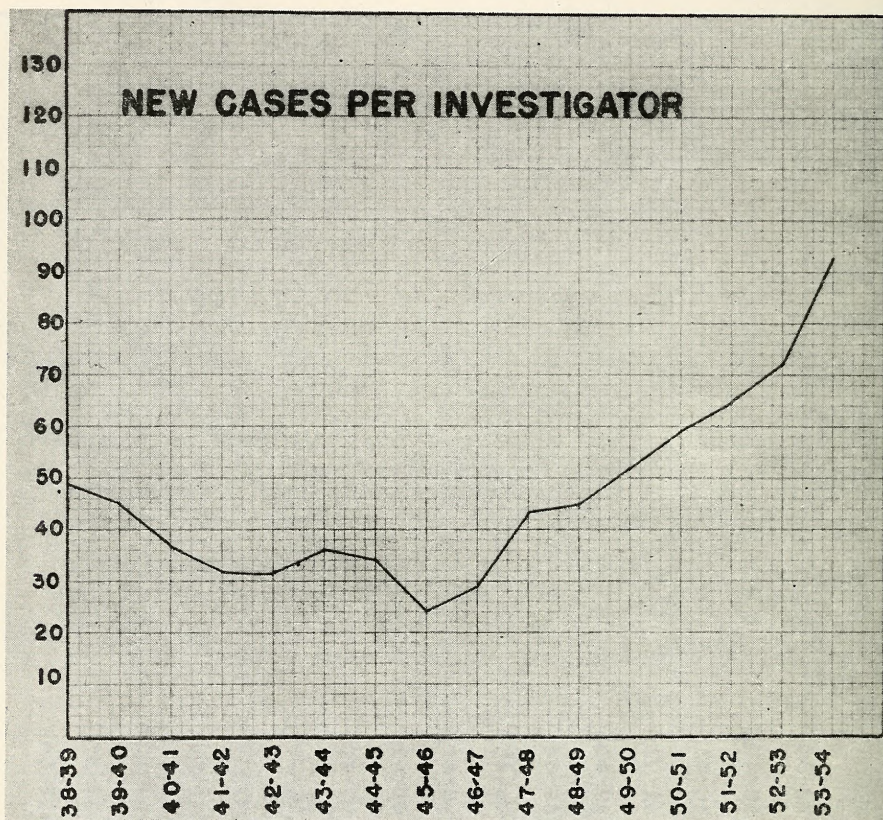
The following shows source of requests and types of work for the Fiscal Year 1953-1954:

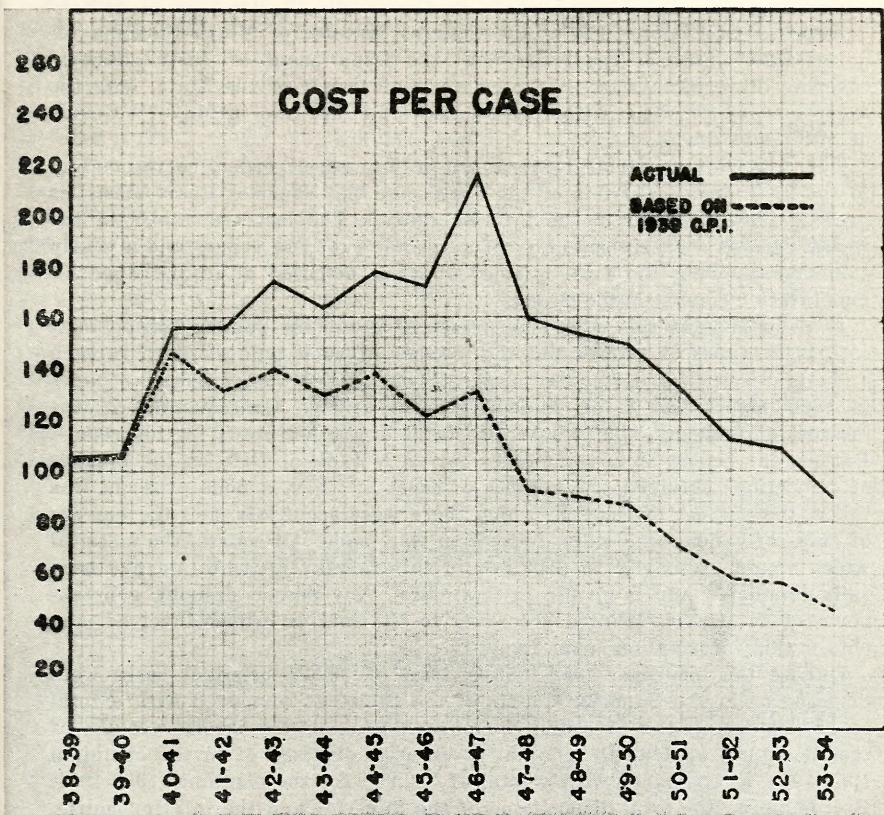
	Sheriffs' Depts.	Police Depts.	High- way Patrol	Solici- tors	Judges	Execu- tive Dept.	Cor- oners	Misc.	Totals
Assults.....	27	4	6	4	—	1	—	—	42
Burglary.....	997	301	2	1	—	8	—	2	1,311
Forgery.....	139	90	1	1	—	28	—	17	276
Homicide.....	63	8	3	4	—	1	4	—	83
Larceny.....	124	48	13	2	—	3	—	4	194
Robbery.....	27	8	—	—	—	1	—	—	36
Sex Offense.....	25	8	—	4	—	2	—	1	40
Miscellaneous.....	126	88	4	15	5	80	7	25	350
TOTALS.....	1,528	555	29	31	5	124	11	49	2,332

The following statement shows the source of requests and types of work performed by the Technical Division during the period from 1 July 1953-1954:

	Sheriffs' Depts.	Police Depts.	High- way Patrol	Solici- tors	Judges	Execu- tive Dept.	Cor- oners	Misc.	Totals
Fingerprint Examinations.....	5,897	3,399	413	—	—	—	—	305	10,014
Firearms Examinations.....	334	49	—	21	—	—	—	37	441
Document Examinations.....	558	891	—	10	—	1,305	—	170	2,934
Medico-Legal Examinations.....	23	15	—	—	—	—	—	—	38
Photographs Printed.....	7,076	5,368	660	—	—	549	—	1,202	14,855
Psychograph Tests.....	138	132	8	—	—	12	—	4	294
TOTALS.....	14,026	9,854	1,081	31	0	1,866	0	1,718	28,576







REPORT OF THE DIVISION OF CRIMINAL AND CIVIL STATISTICS

Article 3 of Chapter 114 of the General Statutes of North Carolina requires that clerks of court file with the Department of Justice reports covering all criminal cases disposed of in all courts of the State, with the exception of offenses tried before Justices of Peace and in Mayor's Courts of cities and towns.

The following material is arranged in numerical order, corresponding to the 21 Judicial Districts of the State, and the Superior Court statistics precede those relating to the inferior courts. The last two tables in the report furnish a yearly summary of a selected group of crimes and a yearly summary showing the total number of cases disposed of in the Superior and inferior courts of the State.

In prior reports this office has presented a tabular summarization indicating the types of crimes and the number of each type disposed in each Judicial District. This tabular material consumed a vast number of pages in each report and is of dubious general utility. Consequently, in the interest of economy, this tabular material is not presented in this report. Rather, the report simply indicates for each Judicial District the number of convictions obtained, the number of cases in which a nolle prosequi was taken, the number of cases in which there were acquittals, and the number of cases of which some other disposition was made. Of course, the material which would ordinarily be provided in this tabular presentation has been fully completed and is on file in this office. Any person desiring a breakdown of the figures printed according to the specific crimes involved may obtain this information upon request.

During the biennium 1952-1953 a total of 38,821 criminal cases were disposed of in the Superior Courts of the State, as compared with a total of 35,580 during the preceding biennium. And, in the inferior courts of record a total of 446,201 criminal cases were disposed of in the biennium 1952-1953, as compared with a total of 372,950 for the biennium 1950-1951. By combining the total dispositions of the Superior and the inferior courts, it appears that an overall total of 485,022 cases were disposed of during the biennium just past as against 408,530 for the biennium 1950-1951.

This overall increase of 76,492 represents an increase of slightly more than 62% over the increase noted in the biennium 1950-1951. Furthermore, considering together the convictions obtained in 1950-1951 and those obtained in 1952-1953, it appears that there has been an increase during the last biennium of approximately 16% over the preceding biennium. Since during the same period the number of crimes committed in the entire United States increased but 9%, our increase in North Carolina is distinctly in excess of the national trend. It is felt that this marked increase in crimes reported in North Carolina may be attributed to a substantial extent to increased efficiency in law enforcement. There has, however, undoubtedly been a significant increase in the number of crimes actually committed each year in North Carolina. If this increase continues, it may require legislative attention.

The Department wishes to express appreciation for the continuing cooperation by the clerks of the various courts. There have been, on a few

occasions, certain minor delinquencies, but these have been cleared up and, generally speaking, clerks have recorded the activities of their respective courts promptly and accurately.

As was pointed out in the report of this Division for the biennium 1950-1951, the Division also gathers certain statistics relative to civil cases in the Superior Courts. At this time we have not undertaken to present an analysis of these figures because they are, in their very nature, not readily susceptible to comprehensive presentation. Nevertheless, the Division is now engaged in a study of statistics relative to divorces granted in North Carolina during the past 8 years and proposes to present the results of this study in the next biennial report.

The material here presented and the official records of this Division upon which this material is based represent much work of a painstaking and exacting nature. The burden of this work devolves on this office and, in part, on the various clerks of court. Nevertheless, we feel that this activity is a necessary one and that benefits eventually to be reaped from it will fully compensate for the effort involved. The correctness of this assertion is bolstered by the consideration and this statistical information constitutes the only permanent and comprehensive record on which any study of the operation of criminal laws and business of the courts of disposing civil cases could be based.

SUPERIOR COURT

1952		1953	
First Judicial District			
Convictions	390	Convictions	437
Nol Pros	56	Nol Pros	84
Acquittals	34	Acquittals	37
Other Dispositions	13	Other Dispositions	7
	<hr/> 493		<hr/> 565
Second Judicial District			
Convictions	570	Convictions	599
Nol Pros	195	Nol Pros	228
Acquittals	78	Acquittals	78
Other Dispositions	27	Other Dispositions	17
	<hr/> 870		<hr/> 922
Third Judicial District			
Convictions	366	Convictions	399
Nol Pros	54	Nol Pros	49
Acquittals	14	Acquittals	7
Other Dispositions	3	Other Dispositions	8
	<hr/> 437		<hr/> 463

SUPERIOR COURT

1952

1953

Fourth Judicial District

Convictions	637	Convictions	672
Nol Pros	124	Nol Pros	168
Acquittals	92	Acquittals	51
Other Dispositions	42	Other Dispositions	22
	<hr/>		<hr/>
	895		913

Fifth Judicial District

Convictions	529	Convictions	483
Nol Pros	162	Nol Pros	163
Acquittals	88	Acquittals	95
Other Dispositions	23	Other Dispositions	45
	<hr/>		<hr/>
	802		786

Sixth Judicial District

Convictions	559	Convictions	532
Nol Pros	140	Nol Pros	152
Acquittals	79	Acquittals	78
Other Dispositions	19	Other Dispositions	37
	<hr/>		<hr/>
	797		799

Seventh Judicial District

Convictions	544	Convictions	594
Nol Pros	105	Nol Pros	111
Acquittals	38	Acquittals	58
Other Dispositions	42	Other Dispositions	36
	<hr/>		<hr/>
	729		799

Eighth Judicial District

Convictions	798	Convictions	726
Nol Pros	107	Nol Pros	172
Acquittals	101	Acquittals	70
Other Dispositions	17	Other Dispositions	38
	<hr/>		<hr/>
	1,023		1,006

Ninth Judicial District

Convictions	881	Convictions	680
Nol Pros	152	Nol Pros	120
Acquittals	38	Acquittals	46
Other Dispositions	23	Other Dispositions	30
	<hr/>		<hr/>
	1,094		876

SUPERIOR COURT

1952

1953

Tenth Judicial District

Convictions	923	Convictions	1,226
Nol Pros	125	Nol Pros	159
Acquittals	97	Acquittals	88
Other Dispositions	22	Other Dispositions	13
	<hr/>		<hr/>
	1,167		1,486

Eleventh Judicial District

Convictions	674	Convictions	726
Nol Pros	44	Nol Pros	82
Acquittals	48	Acquittals	40
Other Dispositions	16	Other Dispositions	42
	<hr/>		<hr/>
	755		890

Twelfth Judicial District

Convictions	1,171	Convictions	1,118
Nol Pros	124	Nol Pros	144
Acquittals	64	Acquittals	38
Other Dispositions	29	Other Dispositions	57
	<hr/>		<hr/>
	1,388		1,357

Thirteenth Judicial District

Convictions	415	Convictions	577
Nol Pros	32	Nol Pros	79
Acquittals	50	Acquittals	46
Other Dispositions	25	Other Dispositions	25
	<hr/>		<hr/>
	522		727

Fourteenth Judicial District

Convictions	858	Convictions	952
Nol Pros	117	Nol Pros	115
Acquittals	111	Acquittals	95
Other Dispositions	63	Other Dispositions	74
	<hr/>		<hr/>
	1,149		1,136

Fifteenth Judicial District

Convictions	607	Convictions	743
Nol Pros	106	Nol Pros	132
Acquittals	45	Acquittals	50
Other Dispositions	32	Other Dispositions	35
	<hr/>		<hr/>
	790		960

SUPERIOR COURT

1952

1953

Sixteenth Judicial District

Convictions	789	Convictions	891
Nol Pros	45	Nol Pros	18
Acquittals	57	Acquittals	52
Other Dispositions	31	Other Dispositions	31
	<hr/>		<hr/>
	920		992

Seventeenth Judicial District

Convictions	1,058	Convictions	1,076
Nol Pros	237	Nol Pros	335
Acquittals	58	Acquittals	56
Other Dispositions	48	Other Dispositions	50
	<hr/>		<hr/>
	1,401		1,517

Eighteenth Judicial District

Convictions	867	Convictions	607
Nol Pros	251	Nol Pros	128
Acquittals	27	Acquittals	12
Other Dispositions	16	Other Dispositions	27
	<hr/>		<hr/>
	1,161		774

Nineteenth Judicial District

Convictions	471	Convictions	476
Nol Pros	225	Nol Pros	92
Acquittals	38	Acquittals	15
Other Dispositions	10	Other Dispositions	10
	<hr/>		<hr/>
	744		593

Twentieth Judicial District

Convictions	551	Convictions	711
Nol Pros	230	Nol Pros	188
Acquittals	16	Acquittals	12
Other Dispositions	13	Other Dispositions	11
	<hr/>		<hr/>
	810		922

Twenty-First Judicial District

Convictions	865	Convictions	1,091
Nol Pros	73	Nol Pros	115
Acquittals	33	Acquittals	48
Other Dispositions	10	Other Dispositions	27
	<hr/>		<hr/>
	981		1,281

SUMMARY REPORT SUPERIOR COURT

Offense	1952		1953	
	Convictions	Other Dispositions	Convictions	Other Dispositions
Assault.....	360	127	291	155
Assault and battery.....	19	24	14	10
Assault with deadly weapon.....	725	268	701	262
Assault on female.....	277	136	307	120
Assault with intent to kill.....	216	62	290	80
Assault with intent to rape.....	62	32	63	36
Assault—secret.....	7	5	10	3
Drunk—drunk & disorderly.....	706	143	873	160
Possession—illegal whiskey.....	258	60	260	57
Possession for sale—sale.....	204	47	228	66
Manufacturing—possession of material for.....	42	5	69	18
Transportation.....	95	20	90	20
Violation liquor laws.....	512	138	507	135
Driving drunk.....	1,825	478	1,751	514
Reckless driving.....	653	258	709	259
Hit and run.....	151	51	109	42
Speeding.....	504	71	535	72
Auto license violations.....	663	112	508	69
Violation motor vehicle laws.....	375	188	509	321
Breaking and entering.....	393	139	373	89
and larceny.....	585	95	791	99
and receiving.....	348	21	483	53
Housebreaking.....	19	5	16	3
and larceny.....	159	10	70	6
and receiving.....	53	8	38	4
Storebreaking.....	15	2	7	1
and larceny.....	67	8	90	10
and receiving.....	113	11	160	7
Larceny.....	575	243	678	232
Larceny & receiving.....	241	51	241	107
Larceny from the person.....	42	16	49	20
Larceny by trick & device.....	1	1	7	1
Larceny of automobile.....	287	73	254	41
Temporary larceny.....	23	8	48	6
Murder—first degree.....	145	50	165	76
Murder—second degree.....	50	4	70	7
Manslaughter.....	189	104	207	102
Burglary—first degree.....	47	15	33	10
Burglary—second degree.....	8	1	14	-----
Abandonment.....	38	31	29	38
Abduction.....	1	1	5	1
Affray.....	40	19	30	17
Arson.....	32	24	59	24
Bigamy.....	33	10	54	4
Bribery.....	3	7	5	-----

SUMMARY REPORT

SUPERIOR COURT

Offense	1952		1953	
	Convictions	Other Dispositions	Convictions	Other Dispositions
Burning other than arson	1	6		
Carrying concealed weapon	148	32	84	19
Contempt	15	2	5	3
Conspiracy	52	37	72	13
Cruelty to animals	4	6	1	4
Disorderly conduct	87	51	105	52
Disorderly house	9	6	12	5
Disposing of mortgaged property	12	14	31	19
Disturbing religious worship	3			1
Violation of election laws				
Embezzlement	143	53	139	38
Escape	82	4	60	7
Failure to list tax	4	1	4	
Food and drug laws				
Fish and game laws	26	22	2	8
Forcible trespass	173	8	177	19
Forgery	624	55	839	59
Fornication and adultery	54	49	54	46
Gaming and lottery laws	88	42	58	35
Health laws	18	1	10	2
Incest	11	10	11	7
Injury to property	113	46	65	53
Municipal ordinances	152	100	84	57
Nonsupport	302	132	411	158
Nonsupport of illegitimate child	59	25	55	37
Nuisance	32	4	15	4
Official misconduct		1		
Perjury	15	12	19	14
Prostitution	42	24	34	8
Rape	51	47	45	44
Receiving stolen goods	105	23	79	15
Removing crop	7	4		1
Resisting officer	99	32	110	30
Robbery	240	84	189	61
Seduction	6	13	7	15
Slander	3	4	3	1
Trespass	54	32	54	42
Vagrancy	23	17	13	24
Worthless check	177	51	323	74
False pretense	64	38	126	53
Carnal knowledge, etc.	34	18	20	22
Crime against nature	58	35	48	16
Slot machine laws				
Kidnaping	5	4	5	
Revenue act violations	3	1		
Miscellaneous	164	106	147	125
TOTALS	14,523	4,434	15,316	4,548
TOTAL CASES		18,957		19,864

INFERIOR COURT

1952

1953

First Judicial District

Convictions	5,640	Convictions	4,342
Nol Pros	163	Nol Pros	123
Acquittals	121	Acquittals	135
Other Dispositions	384	Other Dispositions	466
	<hr/>		<hr/>
	6,308		5,066

Second Judicial District

Convictions	10,074	Convictions	11,047
Nol Pros	1,181	Nol Pros	883
Acquittals	510	Acquittals	672
Other Dispositions	532	Other Dispositions	741
	<hr/>		<hr/>
	12,298		13,343

Third Judicial District

Convictions	8,037	Convictions	7,244
Nol Pros	580	Nol Pros	520
Acquittals	291	Acquittals	224
Other Dispositions	276	Other Dispositions	283
	<hr/>		<hr/>
	9,184		8,271

Fourth Judicial District

Convictions	10,528	Convictions	10,381
Nol Pros	874	Nol Pros	1,045
Acquittals	348	Acquittals	320
Other Dispositions	550	Other Dispositions	452
	<hr/>		<hr/>
	12,294		12,198

Fifth Judicial District

Convictions	4,416	Convictions	4,447
Nol Pros	313	Nol Pros	365
Acquittals	212	Acquittals	168
Other Dispositions	193	Other Dispositions	276
	<hr/>		<hr/>
	5,134		5,256

Sixth Judicial District

Convictions	7,191	Convictions	6,494
Nol Pros	619	Nol Pros	619
Acquittals	591	Acquittals	464
Other Dispositions	517	Other Dispositions	623
	<hr/>		<hr/>
	8,943		8,200

INFERIOR COURT

1952

1953

Seventh Judicial District

Convictions	11,714	Convictions	13,511
Nol Pros	321	Nol Pros	678
Acquittals	563	Acquittals	822
Other Dispositions	375	Other Dispositions	452
	<hr/>		<hr/>
	12,972		15,463

Eighth Judicial District

Convictions	10,838	Convictions	9,518
Nol Pros	1,328	Nol Pros	1,048
Acquittals	765	Acquittals	763
Other Dispositions	825	Other Dispositions	567
	<hr/>		<hr/>
	13,756		11,896

Ninth Judicial District

Convictions	16,234	Convictions	16,895
Nol Pros	1,261	Nol Pros	630
Acquittals	600	Acquittals	625
Other Dispositions	737	Other Dispositions	726
	<hr/>		<hr/>
	18,833		18,876

Tenth Judicial District

Convictions	12,972	Convictions	13,290
Nol Pros	1,023	Nol Pros	935
Acquittals	1,030	Acquittals	916
Other Dispositions	992	Other Dispositions	1,134
	<hr/>		<hr/>
	16,017		16,275

Eleventh Judicial District

Convictions	11,107	Convictions	12,057
Nol Pros	654	Nol Pros	615
Acquittals	6	Acquittals	1
Other Dispositions	1,772	Other Dispositions	972
	<hr/>		<hr/>
	13,539		13,645

Twelfth Judicial District

Convictions	17,611	Convictions	21,298
Nol Pros	995	Nol Pros	1,072
Acquittals	868	Acquittals	862
Other Dispositions	1,194	Other Dispositions	1,354
	<hr/>		<hr/>
	20,667		24,586

INFERIOR COURT

1952

1953

Thirteenth Judicial District

Convictions	8,115	Convictions	8,361
Nol Pros	483	Nol Pros	543
Acquittals	525	Acquittals	434
Other Dispositions	450	Other Dispositions	361
	<hr/>		<hr/>
	9,573		9,699

Fourteenth Judicial District

Convictions	23,293	Convictions	20,477
Nol Pros	809	Nol Pros	850
Acquittals	408	Acquittals	674
Other Dispositions	1,602	Other Dispositions	1,341
	<hr/>		<hr/>
	26,112		23,342

Fifteenth Judicial District

Convictions	9,655	Convictions	8,823
Nol Pros	490	Nol Pros	462
Acquittals	243	Acquittals	211
Other Dispositions	447	Other Dispositions	245
	<hr/>		<hr/>
	10,836		9,741

Sixteenth Judicial District

Convictions	9,054	Convictions	8,545
Nol Pros	520	Nol Pros	296
Acquittals	519	Acquittals	485
Other Dispositions	642	Other Dispositions	656
	<hr/>		<hr/>
	10,735		9,982

Eighteenth Judicial District

Convictions	1,833	Convictions	2,143
Nol Pros	223	Nol Pros	329
Acquittals	197	Acquittals	198
Other Dispositions	230	Other Dispositions	271
	<hr/>		<hr/>
	2,483		2,941

Nineteenth Judicial District

Convictions	6,173	Convictions	6,430
Nol Pros	2	Nol Pros	1
Acquittals	1	Acquittals	2
Other Dispositions	468	Other Dispositions	366
	<hr/>		<hr/>
	6,636		6,799

INFERIOR COURT

1952

1953

Twentieth Judicial District

Convictions	793	Convictions	949
Nol Pros	2	Nol Pros	9
Acquittals	3	Acquittals	6
Other Dispositions	45	Other Dispositions	18
<hr/>		<hr/>	
845		975	

Twenty-First Judicial District

Convictions	5,479	Convictions	5,431
Nol Pros	167	Nol Pros	205
Acquittals	305	Acquittals	337
Other Dispositions	433	Other Dispositions	572
<hr/>		<hr/>	
6,385		6,545	

SUMMARY REPORT INFERIOR COURT

Offense	1952		1953	
	Convictions	Other Dispositions	Convictions	Other Dispositions
Assault.....	3,688	1,717	3,398	1,418
Assault and battery.....	537	264	402	190
Assault with deadly weapon.....	4,615	2,472	4,367	2,129
Assault on female.....	2,922	1,403	3,291	1,410
Assault with intent to kill.....	169	232	206	202
Assault with intent to rape.....	6	57	7	53
Assault—secret.....	3	14		7
Drunk—drunk & disorderly.....	38,166	1,735	38,268	2,077
Possession—illegal whiskey.....	3,836	587	4,032	617
Possession for sale—sale.....	998	336	993	326
Manufacturing—possession of material for.....	243	59	175	30
Transportation.....	358	107	421	124
Violation liquor laws.....	3,385	587	3,342	642
Driving drunk.....	9,452	1,870	8,042	1,800
Reckless driving.....	11,493	2,498	11,951	2,188
Hit and run.....	936	416	867	446
Speeding.....	42,928	1,919	47,392	1,656
Auto license violations.....	17,136	2,585	14,417	2,105
Violation motor vehicle laws.....	20,212	2,313	20,892	2,571
Breaking and entering.....	104	200	72	222
and larceny.....	56	196	43	231
and receiving.....	16	313	36	289
Housebreaking.....	6	35	5	17
and larceny.....	7	50		28
and receiving.....	3	71	5	46
Storebreaking.....	8	43	2	56
and larceny.....	1	81	4	17
and receiving.....	1	45	7	148
Larceny.....	2,465	1,220	2,258	1,096
Larceny & receiving.....	678	278	442	214
Larceny from the person.....	25	59	19	60
Larceny by trick & device.....	8	12	5	4
Larceny of automobile.....	127	301	109	265
Temporary larceny.....	96	35	117	42
Murder—first degree.....	6	116	1	118
Murder—second degree.....				3
Manslaughter.....	4	100	14	93
Burglary—first degree.....	5	64	4	49
Burglary—second degree.....				
Abandonment.....	114	103	123	89
Abduction.....	30	7	1	7
Affray.....	1,489	359	1,524	363
Arson.....	15	34	15	30
Bigamy.....	2	24	6	36
Bribery.....		5	2	3

SUMMARY REPORT

The following is a yearly summary of all cases tried in the Superior and Inferior Courts, showing the total number of cases in which convictions were obtained or other dispositions made.

	Convictions		Other Dispositions		Total Cases
	Superior	Inferior	Superior	Inferior	
1948.....	12,766	141,601	3,727	24,350	182,444
1949.....	13,387	137,986	3,883	23,131	178,477
1950.....	13,614	153,364	3,832	24,468	195,278
1951.....	13,720	161,738	4,414	29,380	209,252
1952.....	14,523	190,733	4,434	32,777	242,507
1953.....	15,316	191,228	4,548	31,423	242,512

The following tabulations shows the number of convictions obtained on a selected group of crimes in the Superior and Inferior Courts.

SUPERIOR AND INFERIOR COURT CONVICTIONS

	1948	1949	1950	1951	1952	1953
Assaults.....	13,862	13,257	13,256	13,741	13,606	13,347
Whiskey Charges.....	51,129	45,627	53,265	48,789	48,803	49,258
Driving Drunk.....	8,538	8,050	9,254	11,185	11,277	9,793
Reckless Driving.....	6,269	7,068	9,095	11,103	12,146	12,660
Speeding.....	19,559	20,396	26,887	29,092	43,432	47,927
Larceny.....	3,988	4,114	4,662	5,346	4,568	4,227
Muder-1st.....	30	41	43	35	151	166
Murder-2nd.....	124	107	92	130	50	70
Manslaughter.....	213	193	208	171	193	221
Burglary-1st.....	11	14	10	21	52	37
Burglary-2nd.....	31	29	42	35	8	14
Arson.....	12	17	17	64	47	74
Embezzlement.....	137	106	224	150	174	181
Forgery.....	572	545	635	596	694	925
Gaming & Lottery.....	2,629	2,245	1,759	1,904	1,406	1,727
Prostitution.....	593	488	433	187	301	173
Rape.....	15	24	17	75	53	60
Robbery.....	264	213	228	191	284	220
Kidnapping.....	5	4	0	4	6	6

SUMMARY REPORT INFERIOR COURT

Offense	1952		1953	
	Convictions	Other Dispositions	Convictions	Other Dispositions
Burning other than arson	4	1		
Carrying concealed weapon	1,068	204	1,143	199
Contempt	62	16	69	19
Conspiracy	5	31	60	69
Cruelty to animals	48	23	28	16
Disorderly conduct	2,929	736	2,885	714
Disorderly house	42	29	48	23
Disposing of mortgaged property	150	66	153	97
Disturbing religious worship	16	3	9	10
Violation of election laws				
Embezzlement	31	116	42	109
Escape	298	83	279	94
Failure to list tax	62	1	34	1
Food and drug laws	2		5	
Fish and game laws	121	28	117	32
Forcible trespass	285	71	344	90
Forgery	70	387	86	455
Fornication and adultery	448	174	497	188
Gaming and lottery laws	1,318	191	1,669	215
Health laws	93	38	83	20
Incest	6	12	30	12
Injury to property	1,214	518	1,086	456
Municipal ordinances	7,350	1,088	6,400	1,040
Nonsupport	2,675	1,268	2,718	1,136
Nonsupport of illegitimate child	313	159	286	156
Nuisance	309	119	290	27
Official misconduct				1
Perjury		7	119	16
Prostitution	259	98	139	70
Rape	2	72	15	69
Receiving stolen goods	111	108	75	128
Removing crop	97	15	18	15
Resisting officer	709	141	828	171
Robbery	44	218	31	209
Seduction	3	8	1	9
Slander	9	16	6	23
Trespass	955	361	841	405
Vagrancy	549	273	502	242
Worthless check	1,595	484	1,705	481
False pretense	110	105	116	174
Carnal knowledge, etc.		33	7	20
Crime against nature	5	68	1	50
Slot machine laws				3
Kidnaping	1	11	1	8
Revenue act violations	2	7	43	1
Miscellaneous	1,054	468	1,142	633
TOTALS	190,773	32,777	191,228	31,420
TOTAL CASES		223,550		222,651

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